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THE

SECESSION AND RECONSTRUCTION OF TENNESSEE

A DISSERTATION SUBMITTED TO THE FACULTIES OF THE GRADUATE SCHOOLS OF ARTS, LITERATURE, AND SCIENCE, IN CANDIDACY FOR THE DEGREE OF DOCTOR OF PHILOSOPHY

DEPARTMENT OF HISTORY

BY

JAMES WALTER FERTIG, A. M.

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CHICAGO
The University of Chicago Press
1898

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INTRODUCTION.

The triumph of the federal arms in the American Civil War only placed upon the federal government a greater task. The sword could conquer but could not convince, could overthrow the Confederacy but could not reëstablish the Union, which then became a political necessity and a constitutional obligation of the government no less to the North than to the South. The North was compelled for its own sake to make the South equal with it in every sense, for to have held the South as a conquered province would have soon wrought the destruction of the Northern states as states. The Constitution could not long have stood the strain of two sorts of governments among states nominally and constitutionally equal. The re-admission of the seceded states to all their original rights under the Constitution was a problem which demanded immediate solution, but its complexity required time.

The re-admission of the states was not the only question involved in reconstruction. The admission of four millions of people, morally low, poverty-stricken and ignorant, as constituent members of the bodies-politic, and their transformation in a day into a people capable of performing the duties of citizenship in a highly civilized, self-governng society, was a question more difficult to solve. In fact, upon the question of the freedmen the whole subject of the re-admission of the states turned. Almost every act, either of Congress, of the President, or of the states themselves, was viewed in the light of its effect upon the negroes. It would perhaps have been just as well for all concerned if the Federal Government had left this matter entirely to the states, as it was done in the border states, but this was not in harmony with the policy of the party in power. The Federal Government had in the end to give the question over to the states. The question of the freedmen, however, although so intimately connected with the restoration of the states, must, in the present treatise, for obvious reasons, be left for the most part untouched.

Another important factor in the problem of reconstruction was

the fact that it must be solved by the leaders of the party in power, whose preceding history rendered them least fit for such a task. The Civil War had greatly excited their passions, and, almost every day, they had stepped beyond the usual limitations of the Constitution, until it had become a habit with them to decide all questions according to their feelings rather than according to law. During the war, they had looked upon the Federal Government as possessing both the authority of a constitutional sovereign and all the rights of war accorded to a belligerent by the law of nations.[1] As the constitutional rights were limited, they came more and more to rely upon the more vague and undefined powers confirmed by the laws of war. And, when the war was over, they applied to the questions of reconstruction the same absolutism which they had employed during the war. They were evidently wholly unfit for the settlement of so important a matter, but as they were the party in power, they alone could solve it. This necessity, however, made the solution of the problem the more difficult.

How to solve the problem the men in power could not agree. The difficulties in the way were almost insurmountable. The questions of law would not harmonize with the facts. There was, indeed, only one solution and that was found, not in the statesmanship of the Federal Government, nor in the virtues of the freedmen, nor in the good temper and good policy of the South, but in the good common-sense of the whole American people. The sense of fairness in the people led to the revival of the principle that the people must be trusted—the fundamental principle of the Constitution. The Republic of the Constitution could only be saved by the application of this principle to the whole country. To this principle of the Constitution the politicians had at last to yield and to leave the question of the social status and business relations of the freedman to be solved by himself and his former owner.

The judiciary was the first to make this change from the way of the politician. In the case of Texas v. White, the Supreme Court reasserted the principle that our country is "an indestructible Union of indestructible states."[2] The people recognized this as a principle long cherished, and began to retrace their steps and to

1. McPherson's History of Rebellion, 326.
2. 7 Wall, 700.

revise their sentiments to harmonize with it. Thus it was, long after the war closed, that the real Union was reëtablished, and this not by solving the questions of law, for they were unable to do that, but by closing the question of fact.

The logical as well as chronological beginning of the history of reconstruction was the appointment of a Military Governor for Tennessee. In the work of Governor Johnson one sees not only the first military government of an American state, but what is more important, the work of the man, who, as President, resumed the work of reconstruction as it fell from the hands of President Lincoln. In the military government and the Military Governor of Tennessee one sees the future of reconstruction and the policy of the future "reconstruction President." This fact makes the reconstruction of Tennessee of greater importance than it would otherwise be, and gives additional weight to every word and act of Governor Johnson.

In the "Address to the People of Tennessee" of March 12, 1862, Governor Johnson declared that he was appointed as "military" governor, in "absence of the regular and established state authorities," for the purpose of "restoring her government to the same condition as before the existing rebellion."[1] More than three years afterwards, in the summer of 1865, he, as President, appointed provisional governors for the states "deprived of all civil government" for the purpose of enabling "the loyal people of said state to organize a state government." In the proclamations of 1865, we see President Johnson pursuing a policy of reconstruction of which his own appointment as Military Governor of Tennessee was the inception.

There were other respects in which Tennessee held a unique position during the period of her reconstruction. She was the last state to secede and the first one to succumb to federal arms—only eight months intervening between the "Declaration of Independence" and the appointment of Governor Johnson. For this reason she was less attached to the Confederacy and less affected by Confederate administration than any other of the seceded states. She was the only seceded state not mentioned in the Emancipation Proclamation and the only one which had the nominal honor of

1. See "Appeal" Union, April 10, 1862.

freeing the slaves. Her geographical position and the direction of her rivers gave easy entrance to both armies and made her soil little else than a camping-ground or a battlefield. Four hundred engagements were fought within the state.[1] Every able-bodied man was compelled to enter one or the other army in order to secure protection. The result of this is seen in the number of troops furnished by the state, which was greater than that furnished by any other state, either North or South. From a male population, which cast 145,000 votes at the presidential election of 1860, came 115,000 troops for the Confederate army, and 31,000 for the Union army.[2]

Tennessee was the only one of the seceded states which had so considerable a body of citizens who remained constantly loyal to the Union. As a consequence she was the only one which escaped military reconstruction, and the only one in which the battle for political power was fought out between factions of native whites. She escaped the ignominy and burdens of "carpet-bag government" and military reconstruction, but the strife between her own people, the effects of which may be seen at the present time, was the penalty which she paid for the privilege. Because the people were so nearly equally divided, the struggle was the more intense, but for the same reason it was the sooner ended.

In one other respect Tennessee held an exceptional position. The re-organization of the state was in the strictest sense a voluntary movement, which fact, apparent to all, won for her many friends in the North, especially in Congress, and gained her early readmission to the Union.

The history of the reconstruction of Tennessee is a drama in three acts and a prologue. The prologue deals with the secession movement, a knowledge of which is necessary to an adequate understanding of the subsequent history, for it was in the secession movement that the division of the people into parties began. The first act begins with the appointment of Governor Johnson and deals with the military administration. The second act begins with the re-organization of the state government in April, 1865, and gives the history of that government to July, 1866, when the state was

1. Miller's Manual, p. 93.
2. Miller's Manual, p. 132.

formally readmitted to the Union. The third act gives the history of federal reconstruction to the last-named date. To each of these divisions a chapter has been given in the following pages.

As has been said, Tennessee was the last state to secede. The genuine patriotism of a majority of her people was sufficient to prevent secession until after the war had begun. Her commercial and economic relations bound her to both sections. Her geographical situation caused her to dread war, for she foresaw that her soil must become the field of battle. She, therefore, assumed what she called an attitude of neutrality and tried to maintain the peace and to reëstablish the Union. The failure of the Peace Conference on which she had counted so much, and the attack on Fort Sumter drove her from her nominal neutrality into co-operation with the South.

The life of the secession government in Tennessee was short, for it abdicated as the result of the first battle in the state.[1] The chapter on this period is in no sense a discussion of the question of secession, which was settled once and for always by the arbitrament of the sword, but it is merely a narrative of the events by which the state was carried into the Confederacy, and the inevitable consequences of these events upon the people.

The overthrow of the secession government, made necessary the appointment of a military governor. Governor Johnson made attempts immediately and at several times thereafter to re-organize the civil government of the state, but all these attempts failed, until the people of East Tennessee undertook the task in the summer of 1864. The movement started by them at this time led, by successive steps to the inauguration of the Brownlow government in April, 1865.

Having refused to secede, and having taken the leading part in the re-organization of the state, East Tennessee naturally thought she had a right to conduct the affairs of the state after re-organization, as a reward for her faithfulness and sufferings. With the inauguration of the Brownlow administration she undertook the task and the next five years were filled with the history of that government. The present treatise covers only a portion of the period. A very interesting chapter including the Ku Klux move-

1. Ft. Donelson, Feb. 16, '62.

ment, the economic history of reconstruction and the *coup de main* by which the Democrats gained control of the state government in 1869, is still to be written.

From the very inauguration of the Brownlow government, the great question before it was how to prolong the rule of the Radical Party in the state, for upon that depended not only the interests of the party, but also the reconstruction of the state.

The Federal Government began the war with the theory that the states were in the Union and pledged itself to restore them at the close of the war with all their equality, rights and dignities unimpaired. But long before the close of the war, largely owing to the spirit enkindled by the severity of the conflict and the desire to interfere in the states in behalf of the negroes, the theory of simple restoration was given up, and the theory substituted that the federal government had a right to impose conditions upon the states precedent to their readmission to participation in the government of the Union. This was the reconstruction theory of reëstablishing the Union. The question of the nature of the conditions to be imposed and what department of the government should impose them led to a long and bitter contest among the different factions in Congress, and between Congress and the President.

This contest had already been waged for two years, when, in December, 1865, the Senators and Representatives from Tennessee appeared in Washington and asked to be admitted to seats in the national councils. Congress refused to admit them until the state had been declared a member of the Union by a formal act of the legislative power of the United States. For almost eight months they were kept waiting, when, July 23, 1866, the state was declared by joint resolution to be thereby restored to the Union. The next day the entire delegation was admitted to seats, and the state was restored to all her rights under the Constitution.

CHAPTER I.

SECESSION.

The first attitude of Tennessee on the questions dividing the North and the South immediately before the outbreak of the Civil War was one of nominal neutrality. This attitude was foreshadowed by the action of her delegates in the Charleston Convention of 1860. They voted against the Southern proposition to give slavery *carte blanche* in the territories, and met afterwards with the Northern delegates at Baltimore, but when the Baltimore convention refused to readmit the delegates who withdrew at Charleston, the Tennessee delegates, believing a compromise no longer possible, withdrew and joined the other Southern delegates in nominating Breckinridge, thus forecasting the attitude and action of their state in the secession movement. In the Presidential election which followed, the state gave another example of her neutral attitude by casting her electoral vote for her own son, John Bell, the National Union candidate, who stood for the Constitution and the laws as they then existed and opposed alike the doctrines of the Democrats and Republicans. This electoral vote fitly represented the sentiments of the people. They were in fact neutral because opposed to both the extreme parties, and not merely because they were unable to agree among themselves.

Although Lincoln had not received a single vote in the state there was no cause to fear any opposition from her citizens. They had expected his election and were prepared to do their duty under the Constitution.

When the Legislature of South Carolina took the first steps toward secession the people of Tennessee, though inclined to ridicule its action, were disgusted and indignant. The following quotations from the leading papers of the state correctly represent the prevailing sentiment:

"We take it to be certain that Abraham Lincoln has received

the majority of the electoral votes required by the Constitution to make him president-elect of the United States. However much we may deplore such a result we accept it as the result of our system of free government in which it is our duty to acquiesce. The South, in giving him a fair trial, will but discharge her duty to the founders of the Republic, and exhibit to the world the dignity of a brave and gallant people who, while asking only what is right, are calmly self-reliant in their ability to repel whatever is wrong."[1]

"We entertain no doubt as to where the people of Tennessee now stand and will continue to stand with reference to the results of the Presidential election. The prevalent sentiment in Tennessee is that disunion is no remedy for existing evils—if evils really do exist, peculiarly and exclusively Southern—or for evils threatened as likely to result from the constitutional election of any man to the Presidency, though he were ten times as hostile to the Southern Institutions as Abraham Lincoln is represented to be."[2]

"Let every man put his foot on disunion. It is no remedy for Southern wrong, or it is only the madman's remedy."[3]

An open letter from ex-Governor Neil Brown, published in all the journals of the state, exhorted the people to stand by the Union, since there was every reason to believe that President Lincoln would administer the government in a conservative manner, and would do the South no injustice in the matter of slavery in the territories because there were no territories belonging to the Union where a Southern man would care to take his slaves.[4]

The newspapers of the state were full of such addresses from influential men. The fact that ex-Governor Johnson, one of the United States Senators, and a majority of the Representatives were uncompromising Union men, further served to steady public sentiment.

The strong Union sentiment in Tennessee, although not the result of, was in a large degree dependent upon, the attitude and acts of the other Southern States. A few days after the election of Lincoln were sufficient to show that South Carolina would, without doubt, execute her threat of secession, and the spread of the

1. Memphis Bulletin, Nov. 12.
2. Nashville Banner, Nov. 13.
3. Memphis Enquirer, Nov. 13.
4. McPherson, War of Rebellion, p. 86.

contagion southward and westward depended upon the action of Georgia. So long as Georgia and Tennessee upheld the federal Constitution South Carolina was isolated, for the Gulf states would hardly dare to move without the assurance that Georgia at least would go out with them. Thus it was that Tennessee, feeling that the destinies of the Union were largely in her keeping, with a confident air held to her neutral policy, hoping to act as peacemaker between the hostile parties. The safety and success of this policy depended not upon Tennessee, however, but upon Georgia, and when the Legislature of the latter state November 18th, decided to call a state convention to take action on the question of secession, and appropriated $1,000,000 to arm the state, the neutral policy of Tennessee was materially weakened. This policy was further weakened when the Legislature of Georgia adopted, December 3, a resolution proposing a conference of all the slaveholding states.

This action of the Legislature of Georgia played into the hands of the secessionists in Tennessee. Under pretext of advocating this conference, meetings were held in various parts of the state for the purpose of creating and organizing secession sentiment. A large meeting in Memphis declared that Tennessee would stand by the convention of the Southern states for weal or woe. Petitions were signed at these meetings asking the Governor to convene the Legislature to appoint delegates to the proposed conference. Governor Harris, warmly sympathizing with the secession movement, and maintaining an active correspondence with its leaders in other states, was not slow to act on these petitions, for he hoped by convening the Legislature to commit the state to some plan of co-operation with the other Southern states. Accordingly, on the 8th of December he issued his proclamation calling the General Assembly to meet in extra session, January 7, 1861. The purpose of the session as expressed in the proclamation was "to consider the present condition of the country," a phrase sufficiently indefinite to cover secession or any measures less radical.[1]

The proclamation of the Governor was regarded as a victory by the secessionists, and they were further encouraged by President

1. House Journal, Jan. 7, 1861.

Buchanan's message denying the power of the Federal Government to coerce seceded states. The secession of South Carolina, December 20th, and the manifesto of Robert Toombs to the citizens of Georgia two days later, announcing the failure of the Crittenden compromise, were to them occasions of great rejoicing, and evidences of ultimate success. Ratification meetings were held in all the larger towns of Middle and West Tennessee. Speeches were made endorsing the action of South Carolina and recommending Tennessee to do likewise, newspaper offices were illuminated, and fifteen guns were fired indicating that the slave-holding states would all follow the example of South Carolina. This was the usual program.[1] It was hoped by this course to create a public sentiment in favor of secession which would influence the Legislature, then about to meet, to submit an ordinance of secession to the popular vote.

The Legislature convened January 7, and, by the election of Breckinridge Democrats to all the offices in both houses, gave evidence of the change of sentiment in the state. The Governor, in his message, advised that the question of calling a convention be submitted to a vote of the people, although he thought the remedy for the present evils lay in amendments to the Federal Constitution.

As suitable amendments, he suggested that the Missouri Compromise be reënacted and that the line be extended to the Pacific ocean; that any state refusing to return fugitive slaves should pay the owner twice their value; that security to masters in traveling with slaves through a free state be guaranteed, and slaves lost in transit be paid for by the state in which the loss occurs; that the abolition of slavery in places where the United States have exlusive jurisdiction be prohibited; and, finally, that these provisions be unalterable except by the unanimous consent of all the slave-holding states.[2] In the event that the amendments failed to pass, Tennessee, he said, must maintain her equality in the Union or her independence out of it.[3] In order that the state might be prepared for any event he recommended the organization of the militia and the immediate purchase of arms.

The course of events in other states tended greatly to strengthen

1. Memphis Daily Avalanche, Dec. 23.
2. Message Acts, ex. sess., 1861.
3. Ibid.

the cause of the secessionists in Tennessee. Before the Legislature met, Governor Ellis of North Carolina had already taken charge of certain forts and arsenals in that state. Governor Harris' message had scarcely been read, when the news came that *The Star of the West* had been driven from Fort Sumter by order of the state of South Carolina. The next day Mississippi seceded. The next day and the day following added Florida and Alabama to the list. When the convention of Georgia on the 17th, after a few hours discussion, adopted an ordinance of secession by a vote of 208 to 89, the Unionists in the Legislature of Tennessee could no longer hold out against the secessionists, and on the 19th an act was passed submitting the questions of secession and of calling a convention to a vote of the people, February 9th.[1] After appointing delegates to a convention of the Southern States, the Legislature adjourned to await the action of the people.

The ready compliance of the Legislature with the recommendations of the Governor alarmed the Union people. The Nashville Daily Banner, of January 26th, warned every citizen to be aware of a treacherous conspiracy to break up the government, and demanded that every man should rise in his might and put down the political tricksters. Whatever occasion there may have been for alarm, it must be admitted that a certain controlling conservatism manifested itself in the work of the Legislature. It is true that it endorsed the position of the Governor that additional guarantees to the South should be made a condition of Tennessee's remaining in the Union, but it determined that the state should not be precipitated into secession by a mere faction. The people were to have an opportunity to choose delegates to the convention with respect to their attitude on the question of secession.[2] Then if the convention decided to make any change in the relations of the state to the Union, the people were to have another opportunity to vote against secession. Finally, to make secession valid, it must be carried by a vote equal to the majority vote at the gubernatorial election of

1. Acts, ex. sess., 1861, p. 15.
2. See ordinance, Acts, p. 15.

1859. These provisions were intended as safe-guards against hasty and thoughtless revolution.

Before the day set for the election arrived the Peace Conference met at Washington and in the hope that some compromise would yet be adopted the people cast their votes in favor of the Union and against the calling of a convention. They were too strongly attached to the Union to vote to leave it so long as there was any hope of peace. The proposition to call a convention was negatived by a vote of 69,675 to 57,798.[1] East Tennessee voted against it 5 to 1, Middle Tennessee by a majority of 1,382, while West Tennessee gave a majority of 15,118 for it.[2] It was thus decided that a convention was not necessary to determine the status of Tennessee. The people were afraid that a convention might, as in other states, carry the state out of the Union, contrary to their instructions. On the plain question of secession, the vote stood 24,749 for and 91,803 against, even Memphis giving a majority of 400 against it.[3] Thus did the people emphatically rebuke the action of the Governor and Legislature and justify the statement already made that they were overwhelmingly for the Union. This result is surprising in view of the fact that seven of the states had already seceded and had organized a Provisional Government at Montgomery.

From this time the loyal people thought that they had effectually killed the secession movement in the state, and were doubtless lulled into inactivity and a sense of security by their success. For two months after the election nothing occurred to change their sentiments, or to cause the state to alter its relations with the Union. If the vote had been taken sixty days after the first election, the result would, unquestionably, have been the same. The Governor and Legislature were still a minority and they would have remained so, but for the attack on Fort Sumter. If there had been no war, Tennessee would never have left the Union.[4]

The first news of the attack on Fort Sumter came with the

1. Brownlow, 219.
2. Ibid, 220.
3. Ibid.
4. Herbert, noted men of the South, p. 169.

force and suddenness of an electric shock, and spread over the state with the rapidity of the telegraph. On that same day a vigilance committee expelled Judge Catron from Nashville, because he would not resign his place on the federal supreme bench.[1] Every city and town in Middle and West Tennessee was the scene of enthusiastic demonstrations. Petitions and resolutions from all quarters, unanimous in their demand for co-operation with the South, came pouring in upon the Governor. The newspapers were full of flaming editorials, and letters and addresses from influential citizens.[2] So great was the sympathy for the Confederacy, that, when the call came from President Lincoln for two regiments to aid in suppressing the rebellion, Governor Harris felt that he voiced the sentiments of a large majority of the people in refusing to send the troops.[3] The bombardment of Fort Sumter settled the status of Tennessee. The first gun-shot drove her from her neutral attitude to that of coöperation with the Confederacy.

The change in Tennessee is exemplified by the change that took place in Arkansas at the same time. The state convention of Arkansas had met the very last of March and had voted against secession 39 to 35, but as a compromise measure had agreed to submit the question to the popular vote at the state election in August. But immediately after the attack on Fort Sumter, the convention met again and voted 69 to 1 for secession.

The reasons for this sudden change of feeling in the border states are obvious. The Gulf states had demanded additional guarantees for slavery, and had seceded because they thought they could make better terms out of the Union than in it. The border states maintained the same doctrines of state sovereignty and secession and demanded the same guarantees for slavery, but believing that they could obtain better terms from the North and exert a greater influence, by remaining in the Union, they had refused to secede, merely as a matter of policy. They did not believe that either party would proceed to actual war, and so long as the peace

1. Daily Banner, of April 16.
2. Ibid, p. 50.
3. Original telegram in Tenn. Hist. Soc. Lib.

was maintained, they could safely remain neutral with a fair prospect of casting the deciding vote in the reconstruction of the Union. But the firing on Fort Sumter and the certainty that the Federal Government would attempt to coerce the South, and that they must fight on one side or the other, compelled them to side with the Confederacy. In any conflict for what was regarded as Southern rights Tennessee was sure to go with the Gulf states, for she was bound to them by inseparable social and economic bonds. All this was clearly understood by the Confederate leaders, and the bombardment of Fort Sumter was a deliberate move on their part, for the purpose of strengthening their cause by the secession of the border states.[1]

For a few days the conservative Union leaders of Tennessee attempted to stay the tide of excitement and to defeat the demand for secession. Meeting in Nashville on the 18th of April, they drew up and published an address to the people, counselling moderation and continued neutrality.[2] Referring to recent events, they endorsed the Governor's refusal to send troops to the President, but disapproved of secession both as a constitutional right, and as a remedy for existing evils. They condemned the coercive policy of the Federal Government as calculated to dissolve the Union in war. They thought this sufficient reason for refusing troops, but not for taking sides against the government. The mission of Tennessee, they said, was that of peace-maker between the Confederacy and the Union. To give up this position would be to transfer the war to her own soil, and to defeat every hope of a reconciliation between the sections. The state should maintain a position of independence, taking sides with the Union and the peace of the country. But in closing they virtually gave up their doctrine of neutrality by declaring, that, if the United States should undertake to subjugate the seceded states, then Tennessee must resist at all hazards and by force of arms. For this purpose they called upon the authorities to arm the state. This address was signed by twelve of the most influential men in the state, among them Neil

1. McPherson Hist. of Reb., p. 112.
2. Greeley, 481.

Brown, Russell Houston, John Bell, E. H. Ewing, Andrew Ewing and John Collander.[1] By this address the conservative element was bound hand and foot, for they pledged themselves to resist every attempt of the Federal Government to suppress the Confederacy, which was nothing less than an alliance with the Confederacy in the impending conflict. They ought to have foreseen that a conflict was inevitable. Self-preservation, the highest law of nations as of nature, compelled the United States to attempt to suppress the insurrection.

In four days these men were pushed on to the most extreme position. At a public meeting held at Nashville on the 22nd, John Bell and the two Ewings declared that the time had come for Tennessee to act with the whole South. They gave up all thought of the Union, advocated a league with the Confederacy and urged the people to enlist and arm immediately.[2] At the same time ex-Governor Neil Brown, leader of conservatives, published a letter in which he said that the policy of the administration, and of the whole North was to wage a war of subjugation against the South, that the border-states would be the battle-ground, and that the first duty of Tennessee was to arm at once. To talk of keeping out of the conflict was idle.[3] A letter from F. K. Zollicoffer at the same time was to the same effect.[4]

On the 15th of April, the very day on which Governor Harris had telegraphed his refusal to President Lincoln, he had issued his proclamation convening the General Assembly on the 25th. In the present state of public opinion the action of the Legislature could easily have been foretold. In his message the Governor recommended the perfecting of an ordinance formally declaring the state independent of the Federal Union, and reassuming the functions belonging to a separate sovereignty. When this had been accomplished, he said, the state must then unite with the Confederacy, for with the Confederacy she was identified by a common

1. Moore's Reb. Rec. 1, Doc. 71.
2. Daily Banner, April 23.
3. Ibid, April 24.
4. Ibid, April 25.

sympathy and a common destiny.[1] He further recommended that ample means be given for a fair and full expression of the popular will, however fully satisfied the Governor and Legislature might be as to the urgent necessity for the speedy adoption of these ordinances.[2]

On the first day of the session it was decided by joint resolution that, with a view to public safety, the Legislature should hold its sessions with closed doors whenever a secret session should be called for by five members, and that the oath of secrecy should then be administered to all officers and members.[3] The subsequent proceedings of the Legislature were conducted behind closed doors. In this manner all the arrangements for secession and war were completed. The public was ignorant of what was going on, even the contents of the Governor's message remained a secret. The editor of the *Banner* however, guessed what would be done. In the issue of the 26th, he said that although no one could tell what the Legislature would do, it was generally supposed that it would pass an ordinance declaring the state independent, and another proposing a union with the Confederacy, both to be voted on by the people at an early day; and that in the meantime a temporary alliance with the South would be formed to continue till the people ratify the proposed union, or in the event they refuse to do so, "to continue during the war." It occurred substantially as the *Banner* predicted.

On the 30th of April, Henry W. Hilliard, agent of the Confederacy, addressed the Legislature in behalf of his government, arguing that the pro-slavery government established at Montgomery was the only one which could be maintained in the South.[4] The next day a resolution was adopted in accordance with Mr. Hilliard's advice, authorizing the Governor to enter into a military alliance with the Confederacy.[5] A committee consisting of G. A. Henry, A. W. O. Totten and Washington Barrows was appointed by the Legislature to confer with Mr. Hilliard for that purpose. This committee, as the result of their negotiations, reported May 7th, the Military League which was ratified by the Legislature the same

1. Acts 2nd ex. sess. p. 1.
2. Ibid.
3. Ibid, p. 50.
4. Am. Cyclo. 1861, p. 679.
5. Acts 2nd ex. sess. 1861, p. 19.

day[1]. This Military League was a treaty drawn up in due form between two would-be independent sovereignties, the Confederate states and the State of Tennessee, and it was to continue until the admission of the latter into the Confederacy. In three brief articles it provided that Tennessee should give over to the Confederacy all her military resources and military operations and all public property received from the United States, and that she should be reimbursed by the Confederacy for all expenditures for military purposes made before she became a member of the Confederacy.[2]

On the day before the ratification of the League, the Legislature enacted a law submitting to a vote of the people an ordinance of secession.[3] This law provided for the time and manner of holding the election and of making returns, declared Tennessee independent of the Federal Union, abrogated and annulled all Federal laws binding upon the citizens of the state, absolved all state officers from their oath to support the Federal Constitution, and provided for the adoption of the provisional constitution of the Confederacy. The last clause of the bill declared that it should become law on and after its enactment, which made the vote of the people superfluous.

The Legislature found its authority for passing such an act in Article I, Section 1, of the State Constitution, which reads: "All power is inherent in the people, and they have an unalienable and indefeasible right to alter, reform or abolish the government in such manner as they may think proper." But Section 31, of the same article adds: "So far as is consistent with the Constitution of the United States," which was evidently the meaning of the framers of the Constitution. In passing this law the General Assembly of Tennessee was guilty of striking out parts of the State Constitution and all of the Federal Constitution so far as it applied to the state and its people. Its members violated their oath to support the Constitution of the United States;[4] and they disregarded the state constitution, by arrogating to themselves rights denied even to the people as a whole,[5] by placing the military power of the state at the disposal of a person other than the Governor of

1. Acts, ex. sess., 1861, p. 21.
2. Ibid.
3. Ibid, p. 16.
4. Art. VI., sec. 3, U. S. Const.
5. Art. I., sec. 31, Const. of Tennessee.

the state of the President of the United States,[1] and by providing an extra-legal method of amending the state constitution.[2] They violated the Federal Constitution by absolving state officials from the oath to support that instrument;[3] by entering into an alliance with the other states;[4] and by providing an army in time of peace.[5]

After passing acts for raising and equipping a provisional army of 55,000 men, appropriating $5,000,000[6] to equip them, and authorizing the Bank of Tennessee to receive and pay out Confederate treasury notes,[7] the Legislature adjourned till after the election which was set for the 8th of June—ostensibly to await the sanction of the people. But this adjournment was only continuing a farce which had begun with the arrangements to submit the ordinance to a popular vote. The bill declared that it should become law from the day of its enactment, and the Governor so considered it. To all intents and purposes the state was a member of the Confederacy from the 7th of May.

From the day of the attack on Fort Sumter there was never any doubt but that a majority of the people were in favor of secession. But a mere majority would not suffice. There must be an appearance of unanimity. For this purpose mobs and vigilance committees expelled or silenced Union men, muzzled editors and threatened the lives of Union leaders.[8] When the election day came the people went to the polls solemnly impressed with the step they were taking, and conscious of the fact that they were no longer free to vote their sentiments. They saw that the Governor and Legislature with the treasury in their hands, all the arms of the state in their possession, and a formidable army in their employ, had joined a conspiracy to overthrow the government, and whatever might be the wish of the people, the result would not be changed by their votes. Nothing that they could do would free them from the military government which had imposed itself upon them. The election returns were to be made directly to the Gov-

1. Const. of Tennessee.
2. Ibid, Art. XI, sec. 3.
3. U. S. Const., Art. VI. cl. 3.
4. Ibid, Art. I, sec. 10.
5. Ibid.
6. Acts, 2d ex. sess., 1861, p. 31.
7. Ibid. p. 50.
8. Greeley, I. p. 481.

ernor, whose official existence and life even depended upon the result.[1] This was equivalent to allowing the Governor to say whether the state should secede or not. Every one knew that if the result was not favorable to secession he would have the power to make it so. But whatever result the Governor might announce, it was absurd to suppose that the Confederate forces would evacuate the state, or that the Confederate Government would release from its service the Tennessee troops. The secret session of the Legislature and the Military League had bound the state and had turned it over to the control of the Confederate army which immediately took possession. To be prepared for any contingency, as well as to influence the vote as far as possible, the number of Confederate troops in the state was greatly increased on the days immediately preceding the election.

The election day passed quietly. Nearly 20,000 more votes were cast than at any previous election.[2] Two propositions were voted upon, that of separation, and that of representation in the Confederate congress. Both were carried by slightly different majorities. The following table shows the vote on the question of separation as given in the Governor's proclamation of June 24.[3]

	Separation.	No Separation.
East Tennessee	14,780	32,923
Middle Tennessee	58,265	8,198
West Tennessee	29,127	6,117
Military Camps	2,741	——
Totals	104,913	47,238

The Governor accompanied this announcement by his proclamation declaring all connection of Tennessee with the Federal Union dissolved. This proclamation completed the work of separation. Tennessee was now nominally an independent state.

It will be seen by reference to the returns that seventy per cent of the vote against secession was cast in East Tennessee, which cast only thirty per cent of the entire vote. This difference of

1. See ordinance, Acts, p. 16.
2. Miller's Manual, 1861. This seems to give color to the statements of the Unionists that Confederate troops from other states voted.
3. Moore's Reb. Rec. vol. II., Doc. 37.

sentiment was the result of natural and historical causes. Tennessee was composed of three grand divisions which were in several essentials so different as to be almost separate states. The citizens of one division spoke and thought of those of the others very much in the same manner as of the citizens of the adjoining states.[1]

In topography and soil the difference of these divisions was very marked. East Tennessee consisted of rugged mountains and narrow valleys; Middle Tennessee, of long mountain slopes and plateaux and undulating table-lands; West Tennessee, of broad alluvial plains. These conditions influenced the people in their attitude toward slavery. In East Tennessee, the ratio of slaves to whites was 1 to 12; in Middle Tennessee, 1 to 3; in West Tennessee, 3 to 5. If we particularize by counties, we find that in no county in East Tennessee was the ratio greater than 1 to 6, while in several counties it was only 1 to 60, and in two-thirds of the division it ranged from 1 to 20, to 1 to 60. The greatest ratio in West Tennessee was 2 slaves to 1 white, and this was true for one-third of the division.[2] Finally, there was a radical difference in the character, sentiments and traditions of thet people of the East and West Divisions which had been inherited from the original settlers. East Tennessee was settled at a time when hostile Indians inhabited the region in such numbers as to make life and property unsafe. Slave-labor did not seek such a home. The sturdy Scotch, Pennsylvania Dutch and the poorer people from Virginia and North Carolina were the first settlers. It was here that the first abolition society in America was organized, and the first abolition paper published.[3] West Tennessee was settled after the Indians had been removed beyond the Mississippi river, and by men from the sea-board who brought their slaves thither for larger enterprise.

Such radical difference of sentiment made it unlikely that East Tennessee would submit to the domination of the rest of the state, although out-voted two to one. As soon as it was known that the ordinances had been passed by the Legislature, a call was issued by the leading men of East Tennessee, chief among these,

1. Hume Loyal Mountainers, p. 103.
2. Census Reports of 1860.
3. New England Magazine, July, 1894.

Senator Andrew Johnson, for a convention to meet at Knoxville, May 30.[1] Delegates from all the counties of East Tennessee and from a few counties of Middle Tennessee came together that day, and formulated and published an address to the people of the state. They protested against secession as ruinous and heretical, and against the attempt of those in authority to override the deliberate judgment of the people expressed in the previous election. They declared that the Legislature had disregarded the rights of the people and had transcended its constitutional powers, in negotiating the Military League which they regarded as the only authority for arming the state. They appealed to the people to restore the state to its former position.[2] But this address, as we have seen, did not have the effect to defeat the ordinance. While East Tennessee was protesting against the usurpation of the Legislature, West Tennessee fortified the Mississippi from Memphis to the Kentucky line, raised an army of 15,000 men under General Pillow, admitted into the state 8,000 troops from Mississippi, and sent several thousand troops to East Tennessee to suppress any insurrection or to repel any attack in that quarter.[3]

Ten days after the election, but before the result was known, the convention of East Tennessee met again, and this time at Greeneville, as it was unsafe at Knoxville on account of the number of Confederate troops there.[4] Reaffirming the work done at Knoxville, they protested against the want of freedom in the election and against the dishonesty of the count, and appointed O. P. Temple, John Netherland and James McDonald a committee to prepare a memorial to the General Assembly asking that East Tennessee, and such counties of Middle Tennessee as desired to coöperate, be allowed to withdraw and form a separate state. The convention then adjourned to meet at the call of any of its officers.[5] They expected that call to come soon, for in case the Legislature refused to grant their petition, they meant to take things into their own hands. But it was after the lapse of three years, and under very different circumstances, that they were called together again.

1. Moore's Reb. Rec. vol. II. Doc. 28.
2. Daily Banner, June 2.
3. Message of Gov. Harris, June 25, 1861.
4. Moore Reb. Rec. II. Doc. 28.
5. Banner, June 22, 1861 .

The memorial, which the committee drew up and presented to the Legislature then in session, was referred to a committee of four from the Senate and eight from the House, but the Legislature adjourned in three days without taking further action.[1]

In case their petition was not granted, it was the intention of the leaders in East Tennessee to raise an army, place John Baxter at its head, seize the railroads and hold that part of the state for the Union by force of arms.[2] For this purpose, they secretly organized the people,[3] but before they could arrange for a general rising, the Confederates were in the state in such force that an attempt to hold the region would have been a desperate enterprise, and would undoubtedly have failed unless vigorously supported by the National troops, since the Confederate government was determined to hold it as long as possible.

But no one can read the official correspondence of the period and not be impressed with the belief that a strong movement from Kentucky into East Tennessee would have been successful, and would have been the greatest possible blow to the Confederacy.[4] This was President Lincoln's cherished plan, but he could never find a general daring enough to undertake it. A successful campaign in East Tennessee would have had a great effect upon the campaign then in progress in Virginia, and would have been a long step toward the capture of Richmond and the overthrow of the Confederacy.

The Confederate Government was greatly alarmed over the condition of affairs in East Tennessee. They feared a general uprising, and to prevent this they established their camps of military instruction in that part of the state. They moved their troops stationed there from one neighborhood to another to prevent an organization of the opposition and to hold it in check. But affairs constantly grew worse, and in July General Felix K. Zollicoffer was appointed to the command in East Tennessee, his former home, in the hope that his influence would quiet the people, he being regarded as a moderate man and much esteemed personally.[5] But this seems to have had little effect, as was shown by the result of the August election.

1. House Journal, June 29, 1861.
2. Speech of Nelson at convention, April 12, '64. Union, April 20, '64.
3. R. R. S. I., vol. II. p. 366.
4. Ibid, p. 350.
5. Ibid, p. 375.

By the election in June it was decided that the state should send representatives to the Confederate Congress. The election of these representatives was set for the first Thursday in August, the day on which foremerly Federal Congressmen had been chosen. In the four districts of East Tennessee the people would not vote for the Confederate candidates, but nominated and elected men to go to Washington. In the First District Thomas A. R. Nelson was elected, but on his way to Washington he was captured by Virginia Home Guards and taken to Richmond, where he was induced to swear to do nothing against the South if allowed to remain at home unmolested. Horace Maynard was elected in the Second District by a large majority, said to be 10,000,[1] and was promptly admitted to a seat at the opening of Congress in December. The Confederate candidates in these two districts acknowledged their defeat and declined seats in the Confederate Congress. The Union candidates in the Third and Fourth Districts, Mr. Bridges and Dr. Clements, were opposed by Messrs. Welcker and De Witt respectively. Here the vote was more equally divided.[2] Welcker and De Witt claimed that they were the only candidates legally before the people, and they were admitted to seats in the Confederate Congress. Dr. Clements made his way to Washington and his case was referred to the committee on elections, which reported unanimously that they found in it the essentials of an election. The House adopted the report without debate and Dr. Clements was qualified January 13, 1862.[3] Mr. Bridges presented his credentials to Congress Feb. 23, 1863, within a week of the close of the session. For a year and a half he had been a prisoner in his own house and escaped to Washington by means of the underground railway. The House admitted him to a seat without referring his case to the committee.[4]

The action of the people of East Tennessee so alarmed Governor Harris that he requested President Davis to send 14,000 additional troops into that part of the state.[5] From this time Union men were suppressed into silence or hunted from

1. Report of contested election cases, p. 466 ff.
2. Ibid.
3. Ibid.
4. Globe, Feb. 23, 1863.

the state. Many thousands left the state and joined the Union army in Kentucky.

So much of the history of this movement in East Tennessee has seemed necessary to an adequate understanding of the subsequent history. But it would lead us too far from our present purpose to go into the reign of confusion and terror which prevailed in that section during the next two years. The Confederates held the region till the fall of 1863.[1] How they were finally dislodged will be referred to in a subsequent chapter.

The remaining history of Tennessee under the Secession Government is military rather than political. The Legislature which met in adjourned session June 20, suspended the civil courts and the sale of property under execution, made it a crime to hold Federal office, wiped from the statutes all reference to the United States, and all penalties for offenses against the same; authorized the enrollment in the state militia of all free colored males between the ages of 15 and 50; placed the resources of the state, both men and money, in the hands of the Governor, and adjourned sine die July 1st.[2] The Secession Legislature, elected in August, held three short sessions, but did nothing of a political nature.[3]

Military preparations were in the hands of Governor Harris, who bent every effort toward the organization of the army and the collection of stores.[4] By July 20, the state had expended $2,225,890,[5] and had equipped 22,000 troops.[6] The command of this force was turned over July 31 to General Leonidas Polk, C. S. A.,[7] then in command of the Confederate forces in the state.[8] By September the state had already spent $5,000,000 on the army and had received nothing from the Confederacy,[9] and this is only the beginning. On September 21, General A. S. Johnston made a requisition on Governor Harris for 30,000 additional troops equipped for the Confederate service.[10] The Governor immediately issued his proclama-

1. For an account of these events see Hume's Loyal Mountaineers, also Brownlow's Book, pp. 258-370.
2. Acts 2d. ex-sess. '61, p. 73.
3. Oct. to Nov., '61; Jan. 20 to Feb. 10, '62; Feb. 20 to Mar. 20, '62.
4. R. R. S. I., Vol. IV., p. 367.
5. Ibid, p. 373.
6. Ibid, p. 372.
7. Ibid, p. 368 and 385.
8. Ibid, p. 431.
9. Ibid, p. 402.
10. Ibid, p. 417.

tion for the mobilization of the militia and the purchase or seizure of all the arms in the state.

The active preparations of Tennessee and the presence of large armies on the border greatly alarmed the people of Kentucky, and the Governor of that state asked Governor Harris for some assurance that Kentucky would not be invaded. Accordingly a treaty was made between the states, in which Governor Harris promised that no troops should cross the line except by the invitation of the Governor of Kentucky. But the Confederate Government denied the power of Governor Harris to make such a treaty, and overrode the "sovereignity" of Tennessee.[1] The reason for this was soon seen when Gen. Polk was ordered to seize and fortify the Kentucky towns on the Mississippi. In September, Bowling Green was captured by General Buckner, and in October General Zollicoffer was ordered to advance into Kentucky from East Tennessee. In the same month Forts Henry and Donelson were fortified and garrisoned. Up to the beginning of 1862, all efforts to dislodge the Confederates from Columbus had failed, and at that time Tennessee lay seemingly secure behind a line of Confederate defences extending from Cumberland Gap to the Mississippi River. On January 18, however, this line was broken by the defeat of General Zollicoffer at Mill Springs. February 6, Fort Henry was evacuated and ten days later Fort Donelson surrendered. The Confederate forces hastily evacuated Kentucky and Middle Tennessee, and the State Government fled to Memphis. Governor Harris, calling the Legislature to meet there, made a great effort to arouse the people to repel the invaders. General Grant advanced up the Tennessee River and General Buell occupied Nashville, and advanced southward to Alabama. The Legislature fearing capture adjourned sine die, March 20, and took refuge with Governor Harris in Mississippi behind the Confederate lines. The Secession Government of Tennessee was at an end.

1. Louisville Journal, July 20, 1861.

CHAPTER II.

MILITARY GOVERNMENT.

With the retreat of the Confederate army after the surrender of Fort Donelson, and the fight of the State Government from Nashville, a territory embracing 30,000 square miles was opened to Federal occupation, and a population of 1,000,000 souls was left without government and in imminent danger of a slave insurrection. The establishment of some sort of government was absolutely necessary. To meet the emergency, President Lincoln, March 3, appointed Senator Andrew Johnson, a former governor of Tennessee, Military Governor, with the rank of brigadier-general. The military title was to indicate the nature of his appointment as well as the character of his work. His government was to be a military government, which was at that time a term unknown to the history and laws, both of the state and of the nation.

In international law the right to institute a military government is a right of every nation making war.[1] It is the exercise of hostilities without unnecessary force.[2] But the government established in Tennessee and other Southern States was not exactly of the sort contemplated by international law. It was a quasi-civil government intended to show the people that the object of the war was to maintain the national supremacy, and that all measures were being used to facilitate the return of the people to their former allegiance.[3] To this end the Federal Government sought so far as possible to treat all persons as citizens of a common country. The character of the government, both in theory and practice, was as mild as circumstances would permit.[4] To permit a people in such a condition to be governed in a regular manner by statutes and codes, to give them officers able and willing to abide by existing laws, made by those whom they were to govern, was an act of mag-

1. 4 Wall, 142.
2. 3 Coldwell, 554.
3. Letter of Lincoln to Johnson, Nicholay & Hay, Vol. VI., p. 350.
4. R. R. S. I., Vol. VI., p. 717.

nanimity on the part of the Federal Government. Such a government, although founded on military power, conferred rights upon the people which they would not otherwise have enjoyed, and protected them from unnecessary hardships. But, it required two sets of officers with overlapping powers which often led to conflicts and delays, and from a purely military point of view, the Military Governor could well have been dispensed with. The purpose of the government, however, was largely political. A helping hand was thereby to be given to the people to return to their allegiance under civil government. Besides, though the Governor was at times an embarrassment to the generals, he was, as a rule, useful to them in relieving them of civil duties.

The appointment of Governor Johnson, although based on the laws of war, was in strict accord with the Crittenden resolutions of July 22, 1861, which were supposed to embody the wishes of Congress on the subject.[1] It was an important step in a consistent policy which these resolutions set forth and whose success many things favored so long as President Lincoln lived. Perhaps, also, the appointment of a Military Governor was not an extra-constitutional act. The Constitution makes it the duty of the President to suppress insurrection, and guarantees to every state a Republican form of government.[2] The first object had been accomplished by the army. The second could only be performed by a union of civil and military powers in one person.

It was the wish of President Lincoln that Governor Johnson should be as far as possible a real governor. In all ordinary cases he was to govern by the laws of the state.[3] Only in extraordinary cases was he to use his military power. In not a few cases, however, he was compelled to use force, but usually with such moderation and discretion as greatly to strengthen the Union cause. His duties were manifold, as may be seen from the following summary: He put the press and pulpit under military supervision, required all municipal officers to take the oath of allegiance, levied contributions on the wealthy for the benefit of the poor, levied and collected taxes for the benefit of the state, took military control of certain railroads and built others for military purposes, raised and equipped troops, issued military proclamations, declared the civil law in force in certain parts of the state and appointed officers of all grades to execute it, issued proclamations for elections, and gave advice to the people on all sorts of questions touching the re-organization of the state.

The appointment of Governor Johnson to this important office

1. Crittenden Resolution, July 22, 1861.
2. U. S. Const., Art. IV., Sec. 4.
3. Letter to Johnson, Oct. 21, 1862, Nicholay & Hay, VI., p. 350.

was a very fortunate one. He was a staunch supporter of the Union and had the full confidence of the Federal Government. No man in America better knew the political history and present condition of Tennessee. For thirty years he had held a prominent place in politics, and no man had served the state more faithfully. He entered political life as an advocate of the Constitution of 1834, which greatly abridged the influence of the large landholders. The next year he was sent to the Legislature, where he opposed the mania for internal improvements. This caused his defeat at the next election. He was returned again, however, in 1839. In 1840 he made his reputation by stumping the state as an elector at large. In 1841 he was elected State Senator and was one of the "immortal 13" who prevented the election of a Whig Senator by refusing to meet the House in joint session. He next served ten years in Congress, where he favored the annexation of Texas, and the Compromise of 1850. In 1853, and 1855, he was elected Governor of Tennessee, and in 1857 he was sent to the U. S. Senate, where he gained a national reputation by his advocacy of the Homestead Law. He defended slavery in the Senate, December 12, 1859,[1] and was prominent in all debates, though he frequently stood alone, being unable to go with the Southern Democrats or with the Republicans. He received the vote of the Tennessee delegation in the Charleston Convention, and supported Breckinridge in the following canvass. In December, 1860, however, he formally broke with the Southern men and determined to stand by the Union. He spoke with boldness against the secession leaders, and he was heard with profound attention on all questions touching the war policy. By him the Crittenden Resolutions were introduced in the Senate and in deference to his wishes they were adopted. When the Federal arms won back Tennessee all eyes turned toward him as the most suitable person to undertake its government. At the urgent request of President Lincoln he resigned his seat in the Senate to undertake a work nearer his heart.

The cause he came to uphold never lacked his attention even in the smallest details. In undertaking the duties of Military Governor, he could never have felt that the position would add to his honors. It must be set down to his sense of duty and patriotism. He had already manifested a strong sympathy for the men

1. Globe, Dec. 12, 1859.

who had been driven from East Tennessee on account of their refusal to support the rebellion. He had assisted them in the formation of Camp Dick Robinson, and now he felt that he would be the proper person to attempt the restoration of a loyal government in the state. On the whole, the work of Governor Johnson is not given due credit by the people of Tennessee. The vigor of his action is still fresh in the minds of many who felt the weight of the authority he was always ready to exercise. He was a man of powerful, even despotic, will, which often led him astray, but he was honest above reproach, which is proved by the fact that although given every opportunity to acquire great wealth, he retired from the governorship poorer than when he undertook it.

Governor Johnson reached Nashville on the 12th of March and found affairs in great confusion. All government was gone, save that of martial law. In anticipation of Governor Johnson's coming, General Grant had issued an order, February 22, forbidding the courts to act under state authorities, and declaring martial law, until a number of citizens sufficient to maintain law and order should return to their allegiance.

Although the secession forces had been beaten and the secession government practically overthrown, secession sentiment was everywhere dominant and nowhere more so than in Nashville. The rebel citizens were defiant and offered every obstruction possible to the organization of a loyal government.[1] Governor Johnson met this spirit of opposition by imprisonment and removal beyond the Federal lines, and by placing the whole press under military control.

On the evening after his arrival Governor Johnson delivered an address to the people of Nashville which was afterwards printed and circulated throughout the state under the title of "An Appeal to the People of Tennessee."[2] In this he referred to the prosperity of the state under the Constitution, the disasters of secession, and the obligation of the President to suppress rebellion and insurrection. He then spoke of the purpose of the war as expressed in the Crittenden Resolutions, of the Constitutional guarantee of a republican form of government to every state, from which the Federal Government could not be released by any act of the state itself, and said that he had been appointed, in the absence of the

1. Amer. Cyclo., 1861, p. 776
2. Am. Ann. Cyclo., 1882, p. 765.

regular and established state authorities, as Military Governor for the time being, to preserve the public property of the state, to give to her citizens the protection of law actively enforced, and, to restore her government to the same condition as before the existing rebellion.

In this arduous undertaking he asked the aid of all persons willing to see a restoration of the former government and earnestly invited them to unite with him by counsel and co-operation to accomplish this great end. He proposed to appoint citizens of Tennessee to the offices of the state and counties, who would execute the functions of their respective offices until their places could be filled by the action of the people. The address closed by proclaiming in most generous and patriotic terms the policy of the Government with respect to the people. The rights of all were to be respected, the protection of the Government, and redress of grievances granted. Those who had maintained their allegiance to the Union were to be honored, the erring and misguided welcomed on their return. No merely vindictive policy would be adopted, though it might be necessary to punish conscious treason in high places. To those, who in a private, unofficial capacity had assumed an attitude of hostility to the United States, a full and complete amnesty for all past acts was offered, on the condition of their again yielding obedience to the laws.

But patriotic and forbearing as this "Appeal" was, it fell short of winning the support of the great mass of the population of the state. They still hoped for and awaited the return of the Confederate armies and continued their opposition to the authority of the United States. The policy of the Federal Government was to win back these people by mild treatment. But this only caused them to stand aloof, while a rigorous policy would have driven them into the arms of the government, or caused them to flee southward, where they would have done less harm to the Union.

The work of re-organization was begun by the appointment of a provisional state government. Edward H. East was made Secretary of State, Joseph S. Fowley, State Comptroller, Horace Maynard, Attorney-General, and Edmund Cooper, Private Secretary and Confidential Agent of the Governor.[1] The next step was to secure the co-operation of members of the City Council of Nash-

1. Union, April 27, '62.

ville, by requiring them to take the oath of allegiance to the United States. Some members refused on the ground that they had never heretofore taken such an oath. They were dismissed from office, arrested for treason, and other persons were appointed in their stead.[1] By a resolution of the re-constructed council a similar demand was made of the teachers and school officers, both public and private, on pain of forfeiting their positions. All ministers were required to take the oath, and six of them, refusing, were sent to Camp Chase.[2] Other influential citizens on refusing to take the oath, were sent south on pain of being treated as spies if they returned.[3] Induced by fear of similar treatment or in sympathy with the easy terms of amnesty offered by the Governor, great numbers applied for pardon and permission to take the oath of allegiance. Parents came to intercede for their sons in the Rebel Army, and to ask the aid of the state in securing their discharge, pledging themselves for their loyalty and good behavior.[4] Letters came by hundreds from men captured at Fort Donelson, and elsewhere, asking the aid of Governor Johnson to secure their release from prison, promising in every case to take the oath and return home.[5] Petitions from influential men came asking that Tennesseeans, prisoners of war should be allowed to return home on taking the oath, and not exchanged, for that would necessitate their going again into the Confederate Army.[6] Men in various parts of the state were active in enlisting troops for the Union Army. A whole regiment was raised in Bedford County, before the end of March.[7] The hope was entertained that soon a larger number of Tennesseeans would volunteer in the Federal Army than were then in the Confederate Army.[8]

This revival of Union sentiment was largely due to the belief that the Confederacy had deserted Tennessee, after the battle of Shiloh, and that the state must make its own terms of peace with the Federal Government. So great was the improvement that Governor Johnson thought that the people of Nashville and Davidson County could be trusted to elect local officers. On the 23d of April, the Sheriff published a proclamation to open the polls for elections May 22.[9] The Unionists took this as the signal to begin the restoration of the state to the Union. Two hundred citizens met at Nashville, May 1, and signed a call, requesting those in favor of such action to meet at the Capital on the 12th.[10]

1. Union, April 27, '62. 2. Am. Ann. Cyclo., 1862, p. 765. 3. Union, April 20, 1862. 4. Union, April 11, '62. 5. Ibid. 6. Ibid. 7. Ibid, April 10, '62. 8. Ibid, April 10, '62. 9. Ibid, April 23, '62. 10. Ibid, May 4, '62.

The convention met on the appointed day. A series of resolutions was adopted, declaring that the interests of Tennessee demand her immediate restoration to the Union, and inviting all citizens to co-operate to that end. A committee was appointed to secure the release of Tennesseeans, prisoners of war; to draft an address to the people; and to correspond with Unionists in other parts of the state. On this committee were appointed A. H. Hall, A. V. S. Lindsley, John Lellyett, Russell Houston, H. H. Harrison and M. M. Brien.[1] The address which they published discussed the abstract right of secession, defended the conduct of the Federal Government, showed the advantage of adhering to the Union, the certain disaster of further following the Confederacy, and said that civil re-organization was the only way of ridding the state of military rule.[2]

The convention and the address did not, however, carry the pending election for the Unionists. Mr. M. M. Brien, the Union candidate for Judge of the Criminal Court, was defeated by a vote of 1,190 to 1,000. Governor Johnson gave the successful candidate his commission, but arrested him for treason and put him in prison.[3] The results of this election did much to open the eyes of the Unionists to the nature and extent of the opposition, which they had not up to this time fully appreciated.[4]

To overcome this opposition the convention and the "Address" were followed by a vigorous campaign of agitation. During the months of May and June more than a score of rallies were held in as many different counties, at which the speakers discussed the whole field of local and national politics.[5] Such men as ex-Governor Brown, ex-Governor Campbell, Colonel Stokes, and Mr. Wisener were leaders in the movement. Governor Johnson gave them his earnest support and frequently took part in person.[6] These meetings were intended to crystallize the Union sentiment, preparatory to some step toward practical restoration. The fall of Memphis and the advance of the Union Armies to Corinth and Huntsville, with the capture of Cumberland Gap, and the prospect of clearing East Tennessee of Confederate forces, again raised the hopes of the Unionists. If the Union Armies had continued to advance, there is little doubt that elections would have been held within a few

1. Union, May 15, 1862. 2. Ibid, June 4, 1862. Am. Ann. Cyclo., 1862, p. 764. 3. Ibid, June 4 and 5, '62. 4. Ibid, May 25, 1862. 5. The most important were those at Lebanon, Shelbyville, Murfreesboro, Pulaski, Columbia, Gallatin, Lewisburg, etc. 6. Union, June 4 and 5, '62.

months, and the State Government in all probability would have been restored.

But a movement was preparing which was to put a stop to reconstruction for the time being. Suddenly guerrilla bands under Morgan, Forest and others, began to scour the southern part of the state, seizing horses, cattle and stores, burning bridges, cutting railroads and telegraphs, killing prominent Unionists and unexpectedly falling upon small detachments of Federal troops. July 13, Murfreesboro, with its garrison, was taken, and on the 19th, Clarksville was captured.[1] Lebanon and Gallatin were captured about the same time, and on the 20th, Morgan made an attack on Edgefield Junction and captured pickets within sight of Nashville.[2] The Capital was surrounded by Confederate garrisons at a distance of thirty miles. These movements were preliminary to Bragg's invasion of Kentucky. The series of movements inaugurated by this invasion stopped political organization, until Bragg's retreat to Chattanooga in the summer of 1863. Governor Johnson had to turn suddenly from political agitation to the defense of Nashville.

This invasion would have been prevented if General Halleck had taken the advice of Governor Johnson. In March, Governor Johnson had protested against the withdrawal of troops southward, and prophesied and invasion and insurrection as a result.[3] His repeated demands for troops to guard and protect the state[4] were answered by General Halleck with the assurance that there was no possible danger.[5] When General Halleck at last learned that Governor Johnson was right it was too late to prevent the invasion.

General Buell prepared to fall back into Kentucky and Governor Johnson fearing that Tennessee would be given up ,asked that General Thomas and his division be left to hold Nashville.[6] When this was refused, he wrote the President, accusing General Buell of incapacity and demanding his removal.[7] Buell continued to fall back and Nashville was under siege from August till December. It was saved only by the determination and personal efforts of Governor Johnson, who held it against the wish of General Buell who considered it contrary to the ordinary rule of war to attempt to hold an isolated position so far in advance of the main army.

The effect of all this was to raise Governor Johnson in the esteem

1. Am. Ann. Cyclo., 1862, p. 767. 2. Ibid. 3. R. R. S. I. Vol. X., p. 181. 4. Ibid, Vol. XVI., Part II., p. 531. 5. Ibid, p. 22. 6. Ibid, p. 516. 7. Ibid, Vol. X., p. 129.

of the President and Secretary Stanton, both for his foresight and his heroic defense.

While this campaign was in progress there was a political movement in West Tennessee which deserves narrating. On the 18th of October, President Lincoln recommended the holding of elections for Congressmen in certain parts of Tennessee, and asked the military commanders to give their assistance in the matter. The citizens of the Ninth and Tenth Districts, composing West Tennessee, nominated candidates and set the 13th of December as the day for election unless another day should be named by Governor Johnson. Governor Johnson on the 8th of December issued his proclamation, naming the 29th as the day for elections. The proclamation failed to reach some of the precincts before the 13th, and in these the elections were held. A raid of General Forrest on the 28th caused General Hurlburt to postpone the elections set for the next day. Many precincts, however, did not get his order and opened the polls. On the result of these elections Mr. Hawkins claimed a seat in Congress from the Ninth District. Probably 1,900 votes were cast. An unofficial person certified that 700 were cast for Mr. Hawkins in one county. General Sullivan certified to the result in another county. The House Committee on elections reported that they had tried to find some way to give effect to this effort of the people to secure representation, but they had not been able to bring the case under any of the rules endorsed by the House in other cases. Mr. Hawkins, therefore, was not admitted to a seat. There is no record of the election in the Tenth District.[1]

The campaign inaugurated by Bragg's invasion was ended by the battle of Murfreesboro, January 1, 1863. For six months after that battle the armies of General Rosecrans and General Bragg lay facing each other south of Nashville, the one extending from Murfreesboro to Franklin, the other extending from Manchester to Lewisburg. The chief object of each was to prevent the other from taking part in the campaign around Vicksburg. General Bragg probably had additional reasons for remaining in Tennessee, in his desire to hold the state until after the August elections, and in the fear that the Tennessee troops would desort or mutiny if he voluntarily left the state. It was not until the

1. Contested election cases, House of Rep. 37th Cong., 32 Sess., No. 46.

last of June that Rosecrans began his advance. During all this time the Confederate conscript law was enforced in all parts of Tennessee where the Confederate scouting parties could go. East Tennessee suffered particularly in this respect.[1] But even where the national forces were nominally supreme, men were arrested and carried off every day.

August, 1863, was the time for the election of Congressmen and State officers in Tennessee. Both parties wished to reap any advantage that might be gained from these elections. Governor Harris, from his headquarters in Bragg's Army, issued his proclamation for an election, expressing the hope that before election day the Federal forces would be driven from the state. On June 17, the secession nominating convention met at Winchester. It is doubtful whether a single member of the convention had been authorized to represent the people. Fully two-thirds of those present were from counties within the Federal lines. Forty were from Nashville and twenty-five from Memphis. The other third consisted largely of army officers. Several private persons came as proxies for counties which they had not been near for many months. One man was proxy for at least six counties, and "military proxy" for another—whatever that may mean. The work of the convention was soon done. Robert L. Carruthers was nominated for Governor and a full Congressional ticket was put in the field.[2] It was hoped that this would inspire the secessionists within the Federal lines with greater audacity, and at the same time deter the neutral and prevent any attempts of the Union men to re-organize the state.

Of course the nominees of the convention were elected at the ensuing elections, but who voted for them I cannot say. It is to be presumed that the vote was that of the army with perhaps a slight vote from Franklin and adjacent counties. The Congressmen went on to Richmond and took their seats, but Mr. Carruthers was never inaugurated Governor.[3] Before the time for that formality came, Brigg's army had retreated into Georgia, and there was not a Confederate post within the state.

The Unionists made no effort to hold a convention until General Rosecrans had begun his advance. On June 20th, the Central Committee published a call for a convention to meet July 1.[4] On that day the convention met and organized by electing Major W. B.

1. R. R. S. I., Vol. XVI., pp. 785 and 934.
2. Union, June 25, 1863.
3. Miller's Manual, 1864.
4. Press, June 20, 1863.

Lewis, chairman. All persons who would take the oath of allegiance to the United States and the Constitution of Tennessee, were admitted to seats. Every 5,000 white inhabitants were allowed one vote. Messrs. Brownlow, Houston, Fowler, Spence and Bosson were appointed a committee on Federal relations. Each division of the state, however, had its own program. West Tennessee wished above all to take some steps toward removing the restrictions on commerce, now that the Mississippi was opened. Middle Tennessee was especially interested in the immediate restoration of the Civil Government in the state. East Tennessee favored a continuance of the Military Government until the state should be cleared of the Confederate Armies. After long deliberation, the last idea prevailed and all resolutions were tabled.[1]

Many reasons were given in support of this action. Some doubted the authority of the convention, and feared that a similar convention of different men would meet and take different action, which would lead to anarchy. Others feared the inability of the State to protect itself and the Legislature from the raids of guerrilla bands. Still others feared to lay themselves liable to the charge of revolution and sought some legal and constitutional mode of re-organization. The men from East Tennessee wished to delay the re-organization until their section of the state should be freed from Confederate forces, otherwise they feared that they should be excluded from all part in the government of the state. They preferred Military Government by one of their own party to a Civil Government by the other divisions of the state, excluding themselves.

It was very fortunate that the convention decided to allow matters to go on as they were. Any attempt at that time to organize the state by electing a Governor and Legisalture would only have increased the anarchy. There was no safety for Civil Government when every county and town was liable at any hour to be visited by a band of guerrillas. Besides, the people were not yet ready to accept the results of the war, even then apparent. They were still acting on the principles of the Crittenden resolutions,[2] and demanded that slavery be maintained.

While this convention was in session came the news of the battle of Gettysburg and the fall of Vicksburg.[3] Then followed the simultaneous retreat of Lee and Bragg. It was commonly believed

1. Union and Press, July 1 and 7, 1863.
2. Speeches made in the convention opposed abolition.
3. Press, July 5, 1863.

that Lee's overthrow was complete and that the Confederacy was nearing its end. The demand for re-organization was louder than ever before. General Hurlburt, writing President Lincoln from Memphis, August 11, 1863, said that Tennessee was ready by overwhelming majorities to repeal the acts of secession, establish a fair system of gradual emancipation and tender herself back to the Union.[1] He recommended that Governor Johnson provide for an election of members of the Legislature, and that the Legislature call a convention which would, in his opinion, end the work in sixty days. Early in September, Chattanooga and Knoxville were evacuated and President Lincoln anxiously reminded Governor Johnson that that was the time to inaugurate a movement for a loyal state government. The manner of inauguration was to be left to Governor Johnson and his friends in Tennessee, but the result must be such as to give the control of the state and its representatives in Congress to the Union party, otherwise the struggle for the state would be profitless. If the re-organization should be the work of such men only as could be trusted for the Union, the Government so organized would be recognized as being the one Republican in form to be guaranteed to the state, and to be protected against invasion and domestic violence.[2]

Some still doubted the authority of Governor Johnson to act in political matters. In order to remove this doubt and to show the attitude of the Federal Government toward reconstruction, President Lincoln, September 19th, gave Governor Johnson an additional commission which authorized him to exercise all powers necessary and proper to enable the loyal people of the state to present such a form of government as would entitle the state to the Federal guarantee therefor.[3]

Military operations continued favorable. November 25, Bragg was driven from Mission Ridge. December 4, Longstreet retreated from before Knoxville. There was now no longer any Confederate force in the state. The President, thinking the time had at last come for the re-organization of a Civil Government, issued on the 8th of December, his proclamation of amnesty and provisional government, which set forth a plan for the restoration of Civil Government,[4] and gave the promise of the President to recognize the governments formed in accordance with this plan. A general amnesty

1. Nicholay & Hay, Vol. VIII., p. 440.
2. Ibid, p. 441.
3. Report of Joint Com. on Reconstruction, p. 5.
4. Union, Dec. 15,1863.

was offered to all persons (except certain specified classes), who had directly or by implication taken part in the rebellion, with restoration of all rights and property, except slaves, upon the condition of taking the oath of allegiance to the Constitution, and promising to support the acts of Congress and the proclamations of the President respecting slavery. The persons excepted were those who had left judicial offices or seats in Congress to take part in the rebellion, and all officers in the army and navy above the rank of Colonel and Lieutenant respectively.

The proclamation further said that whenever a number of persons equal to one-tenth of the number of votes cast at the Presidential election in 1860, being qualified voters by the laws of the state immediately before the Rebellion, and having taken the oath and kept it inviolate, should establish a state government, Republican in form, such government would be recognized as the true government of the state, and the state should receive the benefits of the constitutional guarantee therefor. The proclamation expressly declared that the Executive claimed no right to insure to the reorganized state a representation in Congress, which matter he regarded as being exclusively the province of the two Houses. The President recited as authority for such a proclamation the clause in the Constitution which provides for reprieves and pardons, section 13 of the Act of July 17, 1862, an act to suppress insurrection, and also that clause of the Federal Constitution which guarantees to every state in the Union a Republican form of government.

This plan received the approval of every man of influence in the state.[1] For once it seemed that the President, the Governor and the people were in accord. This favorable turn of affairs was improved by the Unionists of Nashville. The "Union League," a political club of the Capital, took the initiative by calling a mass-meeting in Nashville, January 21, 1864.[2] This meeting adopted resolutions recognizing the authority and duty of the President, or his agents, to secure to the loyal people of the state a Republican form of government, recommending Governor Johnson to arrange for a constitutional convention whenever he thought all parts of the state could be represented, and pledging themselves to vote for delegates in favor of immediate and universal emancipation.

Everything looked so favorable that Governor Johnson decided

1. Press, Jan. 8, 1864. Letter from E. H. Ewing.
2. Union, Jan. 22, 1864.

to begin at once. Accordingly on the 26th, he issued his proclamation authorizing elections for local officers wherever such elections could be held.[1] All white males, twenty-one years old, and six months' residents of the state were to be allowed to vote on taking the oath of allegiance. Inasmuch as these elections were to be held in Tennessee as a state of the Union, the Governor declared that the enemies of the United States would not be allowed to vote, or to hold office. On the 27th, appeared a proclamation concerning pardon and amnesty, and giving directions to those who wished to take the oath.[2] But things were not to move off so smoothly. Good will did not go hand in hand with peace.

These proclamations inaugurated the work of re-organization which it seems safe to say would have resulted in success, but for an act of Governor Johnson in requiring an oath different from that of the President's amnesty proclamation, and supposed to be much more severe. He did this in deference to the wishes of his friends in East Tennessee who found fault with the extreme liberality of the Federal Government to the repentant rebels, placing them in the same category with men always loyal. It was galling to these men, officers and soldiers in the Union Army, to go to the polls with men who had fought in the Rebel Army.[3]

Moreover, a contest arose as to who were citizens under the terms of the Governor's proclamation. Attorney-General Maynard decided that as all who had taken part in the Rebellion had been expatriated, their citizenship began with their taking the amnesty oath.[4] As the Governor's proclamation required a voter to be six months a citizen of the state, these amnestied persons could not vote at the March elections. The additional oath and this decision of the Attorney-General gave rise to a controversy which effectually paralyzed the whole movement, and brought new protests and appeals to the President. One Judge, Warren Stokes of Cheatham County, in doubt as to whether he would be justified in refusing the right of franchise to amnestied men, applied to President Lincoln for instructions.[5] The President replied that in county elections they would better stand by Governor Johnson's plan, otherwise there would be conflict and confusion. A week later, the President telegraphed Judge East, Secretary of State, that he could see no conflict between the oaths, and no reason why any honest person should

1. Dispatch, Jan. 30, 1864.
2. Ibid.
3. Nicholay & Hay, Vol. VIII., p. 443.
4. Dispatch, Feb. 12, 1864.
5. Raymond, Life of Lincoln, p. 596.

hesitate to subscribe to the latter, having taken the former. He was entirely satisfied with Governor Johnson's plan.[1]

The proposed election was duly held March 5. But as Union men did not think that they should be required to take the prescribed oath, and as amnestied men were not to be allowed to vote if they did take the oath, little was done. Such meagre returns as have ever been made public, afford insufficient data for historical conclusions. As an election it was a failure. Soldiers six months in the State voted and citizens staid at home. All who voted subscribed to the oath imposed by the majority party. The Union, the organ of Governor Johnson, confessed that what was called an election was only a serious farce.[2]

Doubtless, however, the event was influential in confirming and renewing the faith of loyalists. Perhaps it had a greater result in drawing the attention of repentant Rebels to the chance it afforded to rehabilitate themselves in their political rights through the President's amnesty proclamation. We may infer that the matter created some inquiry, for the President, March 26, issued a supplementary proclamation, defining and explaining that of the previous 8th of December, excluding from its provisions prisoners of war in confinemen or on parole, or prisoners held for other offenses.[3]

But the failure of these elections was the beginning of better things. Failures were henceforth to be things of the past. A movement now started which led by successive steps to the re-organization of the state. At last, the state having been freed from Confederate troops, the imperturbable Union leaders of East Tennessee were ready to act. Disgusted at the failure of the other divisions to take part in the elections, they again talked of separation and of forming a new state, as West Virginia had done. For this purpose they called together the convention which met at Greenville, June, 1861, and which had adjourned to meet at the call of any of its officers, expecting soon to undertake the government of East Tennessee. It met now in strict conformity to the provisions made then. On the 15th of March three Vice-Presidents, William Heiskell, John Murphy and John Williams published a call for a meeting at Knoxville, April 12, and asked all counties to fill vacancies in their delegations.[4] The meeting was called for the purpose of taking steps toward forming a separate state, but before it convened, other plans

1. Nicholay & Hay, Vol. VIII., p. 442.
2. Union, March 9, 1864.
3. Abraham Lincoln, Complete works, Vol. II, p. 504.
4. Dispatch, March 17, 1864.

were formed and separation was not mentioned. The more important work of governing all Tennessee was the end for which the leaders of East Tennessee thenceforth worked.

On the morning of April 12, nearly 200 delegates from twenty-five counties met at Knoxville.[1] The fact that this was a representative body chosen before secession, and the only organized political factor which liver through the revolution, gave it a prestige and an air of legality which no previous meeting had had. The convention was divided on the question of slavery, one party still standing on the principle of the Crittenden resolutions, the other demanding complete and immediate emancipation. Though they argued the matter several days they were unable to agree and the matter was laid on the table.[2] They were unanimous, however, in indorsing Lincoln and Johnson for President and Vice-President, in recommending that the state should send delegates to the Baltimore National Convention, and in appointing a Central Committee to take charge of all political affairs of the state. The last was the important thing and the real turning point in the history of the re-organization of the state. Within two weeks this committee issued a call for a state convention at Nashville, May 30, to choose delegates to the National Convention at Baltimore.[3] The delegates to the state convention were to be chosen by the counties of the 28th.

The delegates to the National Convention were chosen on the 30th, and instructed to cast the vote of Tennessee for Lincoln and Johnson.[4] They went on to Baltimore and after some delay were admitted to seats.[5] The action of the National Convention in admitting these delegates and in nominating Governor Johnson for Vice-President was looked upon as an acknowledgment by the people of the United States that Tennessee was still a member of the Union. This act so encouraged the Central Committee that they began immediately to plan to cast the vote of the state in the ensuing Presidential election.[6]

An election, however, was a more serious matter than a convention. To hold an election they must get the consent of the Governor, who alone could issue the writs authorizing it. Besides, they might be outvoted, in which case the vote of the state, if counted at all, would be counted against their candidates. They also feared the result of an election on the progress of local re-organization.

1. Am. Ann. Cyclo., 1864; "Tennessee." Dispatch, April 20, 1864.
2. Dispatch, June 20, 1864. 3. Union, May 6, 1864.
4. Dispatch, May 31, 1864.
5. Houghton's Am. Pol., p. 367.
6. Letter of Lincoln to Johnson, Oct. 20, 1862, Nicholay & Hay, Vol. VI., p. 350.

In doubt on these points, the Central Committee asked the leading men of the state to meet them in conference at Nashville, August 2.[1] This conference unanimously agreed to call a convention to meet in Nashville, September 5, to consider the general condition of the country, the means of re-organizing Civil Government in Tennessee, and the expediency of holding a Presidential election.[2]

This convention was the first which East Tennesseeans had attended in force. It is important both for the work it accomplished, and as marking the widening differences among the Unionists of the state. For several months there had been differences among the leaders which were now so emphasized as to form the beginnings of two political parties.

The Radical Party, or what is afterwards so called, was composed of Union soldiers, who had enlisted at the beginning of the war, and for three years had been fighting their way back home. Since the Federal occupation of East Tennessee, they had been stationed there to defend and protect that section. Three regiments of these troops sent delegates for thirty-three counties.[3] With these men were associated most of the Union leaders in the former conventions, nearly all of whom had been refugees from the state during the secession government. The leaders of this party were men of little experience in politics, men of war rather, whom the stirring events of the war had brought to the top.

The Conservative Party consisted of those who had accepted secession, though voting against it, together with those who had afterward accepted amnesty. They were slave-holders for the most part, but men who earnestly desired the defeat of the Rebellion and the restoration of the Union. The leaders of this party, mostly farmers, were modest and unaggressive.

These parties differed essentially in their ideas of the conduct of the war and its results.[4] The Radicals desired the war to go on to the complete overthrow of the Confederacy. It had done its worst for them and they sought revenge on those who had brought it on. They wanted others to suffer as they had suffered. They wanted to destroy the influence of the wealthier classes by the complete destruction of slavery. This alone, to them, was justice. They dreaded an armistice lest some compromise might be made to save a remnant of slavery. The Conservatives on the other hand, con-

1. Union, July 20, 1864.
2. Dispatch, Aug. 3, 1864.
3. Dispatch, Sept. 8, 1864.
4. Noted men of the South, p. 172.

demned the extreme measures of the administration. They feared that the constitution would be permanently impaired unless the war ended in a compromise. If the war should be fought to a finish they feared that the rights of the states, North and South alike, would die with the expiring Confederacy. They wished to re-organize Tennessee under its present Constitution, and leave the questions of emancipation and Constitutional amendment to be dealt with by the State Legislature after re-organization. As most of these men were slave-holders, it is probable that they were influenced by the hope of saving a remnant of the institution by the adoption of gradual emancipation. It was the weakness of this party that it advocated only what the Confederates were willing to accept.

If this had been a mere nominating convention, only the Radicals would have been eligible to seats, and there would, therefore, have been no opportunity for a conflict. But the meeting had been called to consider also the general condition of the country, and the means of re-organizing Civil Government.[1] These were subjects which interested every man, and the committee had urged the people to send full delegations.

The report of the committee on credentials admitted to seats in the convention all unconditional Union men, who were for all the measures of the Federal Government for supressing the Rebellion.[2] Unconditional Union men was only another term for Radicals, and this gave them a majority in the convention.

Mr. D. B. Thomas tried to regain the ground lost by the Conservatives in this contest, by asking the convention to take an oath to support the Constitution of the state, which meant the endorsement of slavery.[3] This brought East Tennesseeans to their feet.[4] Colonel Bridges moved to lay the resolution on the table. Colonel Crawford said that in every convention, Secessionists had introduced such resolutions. Colonel Hauck would never swear to support the Constitution of Tennessee, which was fit only for slaves. Every constitutional man, was, in his opinion, a Secessionists. The resolution was finally referred to the business committee. But the victory was only a nominal one. The Radicals had control of the business committee and the resolution was as effectually disposed of as if it had been tabled.

1. Dispatch, Aug. 12, 1864.
2. Ibid, Sept. 6, 1864.
3. Acts of Ex-Session of 1866, p. 31.
4. Dispatch, Sept. 6, 1864.

The second day was taken up in deciding the purpose of the convention. Colonel Crawford moved that an electoral ticket be placed before the people. Mr. Thomas moved that the convention undertake the work of re-organizing the state. The second resolution was laid on the table, and the first adopted without reference. Thereupon, Mr. Thomas and many of his party withdrew from the convention[1] and the Radicals carried their measures without opposition. After making provision for registration of voters, requiring them to take the iron-clad oath, and appointing a list of Presidential electors, the convention adjourned.

This convention was the beginning of the determined policy of the Radical Party to carry matters with a high hand. By forcing National party-politics upon a convention called to organize civil government, they produced a rupture among the friends of Union. This rupture, however, showed them their strength, and taught them that they could do whatever they wished, if they were only sufficiently audacious.

The convention had done its work. It was necessary for the Governor to take the lead in what remained to be done. On the 15th of September the Governor issued a proclamation setting forth his plan of local re-organization.[2] Elections were to be held where it was possible to hold them; elsewhere officers were to be appointed by himself. These officers were to follow the laws and Constitution of the state as they existed previous to 1861, in all cases where it would be expedient to do so. All officers were to take the oath, formulated by the convention, and negroes were to be tried in the courts by the laws governing free persons of color. This government would continue, he said, until the people acknowledged their allegiance to the United States. Having laid down the basis upon which he would restore civil government, he earnestly appealed to the people to assist in the important work, and threatened to banish from the state, those who continued to oppose the authority of the United States.

But Governor Johnson still hesitated to issue the proclamation authorizing Presidential electioins. He feared the effect of a party contest upon the re-organization of civil government. Not even the desire to have the vote of his own state counted for himself in the coming election, could induce him to endanger the success of his

1. Union, Sept. 7, 1864.
2. Dispatch, Sept. 6, 1864.

local policy. He continued to hold this view until the close of September, and would unquestionably have held it till election day but for the action of the Conservative Party. Some days after the adjournment of the Nashville convention, a number of the men who had withdrawn from it, and others who had refused to take part in it, met and put in the field a list of McClellan electors, and made all arrangements to hold an election, with or without the Governor's consent.[1] The fear that the vote of these electors would be counted for McClellan, induced Governor Johnson to issue, September 30, the proclamation hitherto withheld.[2]

The oath prescribed in the March elections was thought not to be strict enough. The one now prescribed by the Governor was extraordinary and indeed iron-clad. The voters were to take oath, not only that they were active friends of the Union, but that they would oppose all armistices and negotiations for peace until the constitution and laws, and proclamations made in pursuance thereof, should be established over all the people of every state and territory, and that they would heartily assist the loyal people in whatever measures they should adopt.

The oath was altogether too searching for recently made loyal men, and was meant to deter all men from voting the McClellan ticket. The affiant was required to swear that he would "cordially oppose all armistices or negotiations for peace." The Chicago platform of 1864 demanded "that immediate efforts be made for a cessation of hostilities." The taking of this oath amounted to making each voter swear to vote for Lincoln and Johnson electors. Of course such a test oath met with opposition from every Conservative editor and orator in the state. The McClellan electors prepared a protest which they sent by one of their number to be laid before the President. In this protest they declared that the proclamation of the Governor violated the laws of the state by changing the manner of choosing electors, and by changing the qaulifications of voters. They further declared that the oath, formulated by a partisan assembly in no wise representative of the people of Tennessee, was a violation of the terms of the President's amnesty proclamation.

Mr. Lellyett, who bore the protest, reached Washington and presented it to the President, October 15th. The President was evi-

1. Press, Oct. 1, 1864.
2. Dispatch, Sept. 27, 1864.

dently not in his usual amiable mood that morning. He asked Mr. Lellyett how long it took him and the New York politicians to concoct the paper. Mr. Lellyett assured him that none but Tennesseeans had known of it. The President then said that he expected to let the friends of McClellan conduct their side of the contest in their own way, and that he would manage his side in his way.[1] He would give no other answer at the time, but later sent a letter to Mr. Lellyett and the protestants, saying that he could do nothing with the matter, either to sustain the plan or revoke or modify it.[2] October 29th, the protestants in a long reply to the President in which they charged Governor Johnson with complicity in breaking up McClellan meetings, withdrew from the contest.[3] Whether the President took the right course in this matter is of small concern. Probably he foresaw that Congress would reject the vote. It was important, above all things, however, that he should maintain the friendly relations between himself and Governor Johnson.

Details of the election which followed are very meagre. Despite the withdrawal of the McClellan electors, a few votes were cast for them. In Nashville a small vote was cast, 1,317 for Lincoln, 25 for McClellan. The Tenth Regiment of Infantry cast 704 votes—a unanimous vote—for Lincoln. Memphis gave 614 votes for Lincoln, 26 for McClellan. At Gallatin, Lincoln received 107, McClellan 12.[4] The Lincoln and Johnson electors were everywhere successful, but when Congress met to count the electoral vote, the vote of Tennessee was thrown out by joint resolution. The President promptly signed the resolution, and did it in such a manner as to disarm the opposition in Congress.[5]

The result of this contest was two-fold, first to develop and bring to light, a decided difference of opinion and feeling among the Unionists, as shown by the two Presidential electoral tickets, and secondly to teach the Radicals that they were in a decided majority in voting if a test oath were required. In any election for state officers they might hope to win. This was important in view of the fact that a state election now became necessary, as Governor Johnson had been elected Vice-President and would soon be called from the state. They, therefore, resolved to take immediate steps to choose his successor.

Again it was the East Tennesseeans who took the initiative.

1. McPherson History of War of Rebellion, p. 425.
2. Press, Oct. 28, 1864.
3. Ibid, Oct. 31, 1864.
4. Ibid, Nov. 29, 1864.
5. Globe, Jan. 30, 1865.

Scarcely was the result o fthe presidential election known when the Union Committee of East Tennessee issued a call, November 12th, for a preliminary state convention to meet in Nashville on the 19th of December.[1] In making this call they said they were led to do so by a large vote cast at the recent presidential election. They evidently counted on all this vote to sustain them in whatever measures they should adopt. The convention was to be a primary assembly of the people and was intended only to provide for a constitutional convention to meet afterwards.[2] The call is published said, "If you cannot meet in your counties come on your own responsibility." The committees of the other divisions of the state were asked to publish the call, and the old Knoxville convention was called together again to appoint delegates to the proposed state convention.

But before the day arrived for the convention, Hood's Army had entered the state and the battles of Franklin and Nashville had been fought. On December 9, however, while Hood's Army lay before Nashville, the committee of Middle Tennessee, knowing that a convention was out of the question then, and hoping that Hood would soon be driven from the state, postponed the convention till January 8, in commemoration of the battle of New Orleans.[3] They requested the committees of the other divisions to publish similar notices which was done. On the 15th and 16th of December, Hood was routed before Nashville and his shattered army was driven from the state, and the way made clear for the meeting of the convention.

Accordingly, on the morning of January 9 (the 8th being Sunday), the convention met in the Capitol. Colonel Sam Rogers was chosen President. On taking the chair the President said that the design of the meeting was to nominate delegates to a state constitutional convention which should undertake the work of re-organizing the State Government.[4] For this purpose he invited to seats in the convention all Union soldiers and all others who had not voluntarily borne arms against the United States, nor given aid and comfort to its enemies.[5] Five hundred delegates from sixty counties were then enrolled.

Both Radicals and Conservatives were out in force, resolved to make the best fight possible. The first contest was over the question of the basis of representation, in the convention. The Conservatives proposed to give each member one vote. The Radicals in-

1. Press, Nov. 13, 1864.
2. See the call, Ibid.
3. Press, Dec. 10, 1864.
4. Union, Jan. 10, 1865.
5. Ibid.

sisted that each county should have one vote, and one additional vote for each 150 votes cast against separation in June, 1861.[1] The question was debated long and vehemently, and the Radicals finally won. Their proposition was adopted without change.

The result of this decision was not at first apparent to all. Only those who had planned the measure had calculated its effect. In the election of June, 1861, the thirty counties of East Tennessee had cast 33,000 votes against secession; the thirty-four counties of Middle Tennessee, 8,000, and the eighteen counties of West Tennessee, 6,000. This gave East Tennessee 250 votes, Middle Tennessee, 87, and West Tennessee, 58.[2] The effect of all this was to identify the Radical Party with East Tennessee and to give East Tennessee absolute control of the state in the work of re-organization. The only obstacle in the way of her absolute power would be the lack of harmony among her own people.

The next question, however, brought before the convention, almost led to a rupture in the Radical Party and the loss of the advantage already gained. The question was a declaration of the purpose of the meeting. Some favored adhering to the original plan of considering the meeting as a primary assembly to make arrangements for a Constitutional Convention to meet later. Others wished to declare the present convention one of plenary powers, competentt, itself, to undertake the work of amending the Constitution, and of re-organizing the State Government. The business committee favored the latter plan and reported a scheme, consisting of certain amendments to the Constitution, a schedule, and a series of resolutions, all of which when adopted by the convention, was to be submitted to the people for ratification. The opposition declared that this was revolutionary. They maintained that the Constitution provided a method of amendment, which was by convention, delegates to which were to be freely chosen by the people. Mr. Butler of Johnson County, offered in lieu of the report of the business committee, a series of resolutions embodying this plan. For a while the contest was waged between two factions of the Radical Party. The one led by Mr. Butler had law and form on its side, and it would likely have won in the end, had it not been joined by the Conservatives. The Conservatives were also sticklers for the Constitution and law, hoping thereby to save slavery or to bring about

1. Union, Jan. 10, 1865.
2. Dispatch, Jan. 11, 1865.

gradual or paid emancipation. The fact that they sided with Mr. Butler drove many of his followers to the other faction.

For two whole days, six sessions of the convention, the question was warmly debated. It seemed till near the close that the Constitutionalists would be successful. They had made by far the greater number of speeches and seemed to have a monopoly of the arguments. The military officers were unable to stand in debate against the lawyers, who were all against the proposition of the committee. Those who favored the proposition of the business committee were unabe to speak in its behalf. It was not until the second day of the debate that Colonel Byrd rose to advocate the measure. His argument was based partly on the necessity of immediate action, and partly on distrust of the people. He said that if the convention now nominate candidates for the Legislature, each county would be compelled to vote for them, but if the people were allowed to choose, they might select men not in harmony with the Union. He was afraid to allow the people to act, lest they should choose men inimical to the program of East Tennesseeans. It is almost certain that the question would have been decided in favor of the Constitutionalists if the vote had been taken at that time.

But the Radicals had a last resort. They determined to ask Governor Johnson to speak in favor of their plan. He consented, and strongly advocated the adoption of the report of the committee. He justified such action by that same clause in the Bill of Rights which had been quoted to justify secession. His argument, condensed, ran thus: "The people have a right to amend, alter or abolish their government, as they may see fit. You are a part of the people. Any man may draw up resolutions, which when ratified by the people become law. This is Constitutional and consonant with the rights of popular government." Governor Johnson was followed by Harvey Watterson, who tried to break up the opposition by showing that its desire for delay was only for the sake of saving a remnant of slavery.[1]

The next morning the debate was resumed, but it was plain that the Constitutionalists were weakening. The speech of Governor Johnson had changed the minds of many as to the question of legality. The address of Mr. Watterson had won over all the

1. Dispatch and Press, Jan. 12 and 13, 1865.

abolitionists. After some time had been spent in explanations, Mr. Watterson moved the previous question, and the matter came to a vote after a debate of almost three days. The question was upon the adoption of Mr. Butler's plan in lieu of the report of the committee. It was lost by a vote of 113 to 161.[1] The report of the committee was then taken up by sections and amended, and finally adopted as a whole.

This action of the convention in changing, what had originally been called as a mass-meeting, into a convention with plenary powers, was stigmatized at the time by the Conservatives as revolutionary and unjustifiable. And later when the Confederate soldiers returned, it was made the basis of opposition, especially after the passage of the franchise bill.

The report as finally adopted by the convention proposed two amendments to the State Constitution, one abolishing slavery, and another forbidding the Legislature to make any law recognizing it. The report also contained a series of resolutions directing that all who voted on the amendments should take the iron-clad oath; that the returns should be made to the Secretary of State, and the result announced by the Governor; and that the convention should nominate a candidate for Governor and a complete Legislative ticket. The schedule which closed the report, repealed that section of the Constitution which denied to the General Assembly the power to emancipate slaves; revoked the ordinance of secession, dissolved the Military League, suspended the statute of limitations, declared null and void all acts of the secession government; repudiated the secession state debt; and ratified all appointments and acts of Governor Johnson. It further provided for two elections, the one on February 22, to ratify the work of the convention, the other on the 4th of March for the choice of a Governor and Legislature, the latter to be elected on a general ticket and to assemble on the first Monday in April. Finally, the schedule provided that the qualifications of voters and limitations of the franchise should be determined by the first Legislature which should assemble under the amended Constitution.[2]

After the adoption of this report and the nomination of candidates for Governor and Legislature, the convention adjourned. Governor Johnson, by proclamation, authorized the opening of polls

1. Union, Jan. 14, 1865.
2. Report in Joint Committee on Reconstruction, p. 7.

and the holding of elections on February 22, as provided by the convention.[1] Only forty-two counties rendered returns, fifteen in East Tennessee, twenty-one in Middle Tennessee, and one in West Tennessee. These counties gave a total of 26,865 votes for and 67 against the amendments.[2] As this was twenty per cent of the vote cast for President in 1860, it was considered as more than a compliance with the provisions of the President's amnesty proclamation of December 8, 1863. The amendments were declared ratified February 28, by proclamation of Governor Johnson, who at the same time authorized an election March 4, for state officers, already provided for by the convention. At this election, Wm. G. Brownlow was chosen Governor by 23,352 votes, against 35 scattering ones. The Legislative ticket received the same number of votes as the Governor, since the same ballot which contained the name of the Governor, contained the names of twenty-five candidates for the Senate, and eighty-four candidates for the House of Representatives. This method of a general ticket was unusual in Tennessee, though not illegal, and it was resorted to in this case to insure the election of members from all the districts, as well as to prevent the election of any one who had not received the recommendation of the convention. This action, also, was afterwards much criticised by the Conservatives, but it is hard to see how any other method would have succeeded.

We have now reached the end of the Military Government. The proclamation authorizing elections was the last official act of Governor Johnson. From his inauguration as Vice-President till the inauguration of Governor Brownlow, April 5, there was an actual interregnum in Tennessee.

In closing this chapter it will perhaps be in place to add a word as to the legality of the work of Governor Johnson. Though questioned at the time, his authority has since been fully recognized by the people and courts of Tennessee. If a Military Governor should ever be required again there would be no question as to his powers. The Constitutional Convention and the whole people afterward ratified the acts of Governor Johnson. The Supreme Court of Tennessee in several cases has recognized his government as legal. In the case of Rutledge vs. Fogg, growing out of the collection of taxes by the municipal council of Nashville on

1. Report in Report of Joint Committee on Reconstruction, p. 8.
2. Miller's Manual, 1865.
3. 3 Coldwell, 554.

property occupied during the war by the military forces, the Court held that President Lincoln had authority to appoint Governor Johnson; that Governor Johnson did not exceed his authority in the appointment of the municipal council; that the Mayor and the Council had the right to levy and collect taxes; and that taxes levied bello flagrante were collectable bello cessante. In the case of Ensley vs. Nashville, where the city of Nashville tried to escape liability for expenses incurred during the military occupation, the Court decided that the Mayor and Council appointed by Governor Johnson constituted a de facto government, and that the city was liable for property taken from individuals for its benefit, and by its agents, though these agents were not elected in pursuance of the city charter. These decisions are valuable, as local interpretations by non-partisan bodies, jealous of extra-legal interference with the course of civil law.

1. 2 Baxter, 144.

CHAPTER III.

THE BROWNLOW GOVERNMENT.

At the inauguration of the new government, it is well that we should glance at the character of the men who are about to be inducted into office ,and who are to control the affairs of the state for several years to come.

The Governor-Elect, William Gannaway Brownlow, was born in Wythe County, Virginia, in 1805, and was left an orphan at the age of 11 years. He began life as a carpenter, but became a Methodist minister at the age of 21 years. His first political work was the advocacy of the election of J. Q. Adams in 1828. During the nullification excitement he was riding the circuit in which Calhoun lived. He opposed the doctrine and wrote and published a pamphlet in defense of his views. He became editor of the Knoxville Whig in 1838, and remained in that capacity till the war. He was especially known for the bitterness of his vituperations.

In 1843 he ran for Congress and was defeated by Andrew Johnson. He was appointed by President Fillmore on a commission to improve the navigation of the Missouri River. He favored slavery, but opposed secession with all his power. His house was the last to bear the American flag in Knoxville in 1861. On account of this he became very unpopular and was compelled to suspend his paper October 24, 1861. He was accused of bridge-burning, and a company of troops were sent after him with orders to shoot him on sight. But his pursuers were unable to find him in the mountains whither he had fled for refuge. They induced him to surrender under promise of a safe conduct to Kentucky. After some months' imprisonment he was sent to Nashville, March 15, 1862, whence he went north and remained till 1864. When Tennessee was cleared of Confederate troops he returned and took an active and leading part in all the work of re-organizing the state. His name appeared among those who called the nominating convention, May 30, 1864, and he was a member of the Union Central Committee from that time till he was elected Governor. He became

the leader of the Radicals in Tennessee, and was in close touch and sympathy with the Radical leader in Congress, with whom he was in constant correspondence.[1] To the end he opposed any compromise with those who had voted for separation in 1861.

Governor Brownlow was possessed of no real knowledge of state affairs and no real ability save his ability to say hard things about his enemies. He was too obstinate and vindictive for a politician and too much of a partisan for a statesman even if he had possessed the ability and the experience. He was, therefore, wholly unfit for the position to which he had been elected. His only redeeming trait was his uncompromising Unionism, and his election shows how the Union men were willing to put the Union before all else.

As for the Legislature, little can be said, as little is known. Of the twenty-five Senators only five had ever been members of a Legislative body.[2] Five were lawyers, two judges, one a preacher and one a Confederate soldier. The others, eight of whom were from East Tennessee, were for the most part men of mediocrity, whom the war had brought into prominence, either in actual service in the field, or in some ministerial capacity. A few were men of ability, and all presumably honest.[3] The inexperience of the House is still more glaring. Of the eighty members elected, three only had had experience as Legislators. Of the others, four did not take their seats. A few of the remainder were men of ability, but they had taken an active part in the war and become so radical in their views as to be carried beyond reason.[4] The majority felt their weakness and inexperience and were just the sort of men to follow meekly the direction of the extreme leaders. It happened here as usually in such cases, the timid and inexperienced majority was drawn in the wake of the radical minority. Fully two-thirds of these men served four years and ended their terms of service still unknown for anything they had done or said. Their duties were performed by voting yes, when asked to do so. In such a time only men of the ripest experience should be trusted with public affairs. But the men whom the state had honored and trusted in the past had almost to a man gone with the state in secession and were now ineligible to any position. In order to get Union men in some parts of the state the convention had been compelled to take men

1. Rosters of the previous Legislatures.
2. Ibid.
3. Letter of Mr. Kercheval to the Author.
4. Ibid.

without experience. In this case, as in the case of the Governor, Unionism was the chief requisite.

The new government was promptly set in motion. The Legislature met, according to the terms of the schedule, on the 2d of April. Hon. E. H. East, Secretary of State, in turn called each House to order and read a certified list of the members elected.[1] Each House then proceded to organize. The Senate chose General Sam R. Rogers, Speaker, and Mr. Cone, Chief Clerk. Owing to a tie between Edmund Cooper and James R. Hood, the House failed to choose a Speaker the first day. On the second day, after the withdrawal of Mr. Cooper, Mr. Heiskell was chosen.[2] The Legislature was now ready for work. Its first care was the counting of the vote for Governor. Meeting in convention on the 4th, they declared W. G. Brownlow elected, and appointed a committee to arrange for his inauguration at his earliest convenience.[3]. The inauguration took place on the morning of the 5th. In the inaugural address the Governor dwelt on the approaching end of the war, the evils of State Sovereignty and the lessons to be gained from the experience of Civil War.

At last the re-organization of civil power in Tennessee was an accomplished fact. A Governor and a Legislature, elected by the people, had been installed at the Capital and had started again in its accustomed manner the work of administration. The task set before the new government was by no means a light one. The long discussed machinery engendered a deal of friction in many parts which caused trouble and consumed time. But this could and would be overcome if the government were allowed to stand. And there was no danger from any force within the state, for all alike had recognized for months the necessity of government, and secretly or openly rejoiced in its re-establishment. Only one thing could affect the permanency of the government, the invasion of the state by a hostile army. All fear of this was removed by the surrender of Lee and the overthrow of the Confederate Government within four days of the inauguration of Governor Brownlow. This event relieved the new government of all anxiety as to its tenure.

Already a large number of Confederate troops had returned to their homes. The destruction of Hood's Army at Nashville was little else than the wholesale desertion of men who had almost re-

1. House Journal, Session of 1865, April 2.
2. Ibid, April 2 and 3, 1865.
3. Ibid, April 4.

fused to leave Tennessee with Bragg in 1863,[1] and had openly said that they would not leave again if Hood was defeated. In a few days after the surrender of Lee thousands of other soldiers returned to search for the homes left four years before, having willingly taken a pledge to conduct themselves as peaceable and law-abiding citizens. These men had seen enough of the disasters and privations of war, and meant to keep their parole. Their first purpose was to reconstruct their homes, and provide themselves and theirs with the necessaries of life. They realized that they had fought to the finish and were on the losing side, but as a rule they cherished no hostility toward the Union men who were now in control of the state. They were not concerned with politics. They knew the history of the re-organization, but they accepted it and justified it on the ground of necessity. They considered the disorders of the time sufficient to warrant the means used in organizing the civil power, and did not complain that the government was not one of their choosing nor that it represented only one-seventh of the voting population of the state. If they were not the friends of the established order, they were surely not its enemies, but were content to bear the present, believing that time and the intelligence of the people would cure all. They realized that it was for the present good of all that the government at Nashville should be in the hands of men fully trusted by the authorities at Washington. There were, indeed, disorders, but they were local, and consisted mostly of thieving, and persecution of returning Confederates.[2] So far as one can see now, there was at first no opposition to the government and no danger of an insurrection either patent or latent. The conflict of parties, which later became so intense, was not begun by the returning Confederate troops. If affairs could have gone on as they were without an election, it seems safe to say that this conflict would have been wholly avoided.

But Federal reconstruction could not be consummated without an election for Congressmen. To send other than unconditional Union men to Washington would be to delay reconstruction. To elect Union men required a restriction of the elective franchise This restriction would in itself have led to opposition and conflict. From the point of view of the Union men of Tennessee this restriction seemed necessary and just. Of course one cannot say what

1. Dispatch, Dec. 20, 1864.
2. Ibid, July 23, 1865.

would have been the result if the ex-Confederates had been allowed to vote and hold office. So far as local affairs are concerned it might have been best. General Sherman and others thought it would be the safest way to settle the questions of reconstruction.[1] But whatever would have been the result on local affairs, it is certain that, for Federal reconstruction, a limitation of the suffrage was absolutely necessary. This limitation saved Tennessee from military reconstruction.

While this restriction of the suffrage would necessarily under any circumstances have led to opposition on the part of the ex-Confederates, the Radicals of Tennessee made the matter worse by their hostile attitude. They looked upon the returning soldiers as enemies to society and ready to rise at any moment and overturn the government. They must, therefore, be deprived of rights, if not as a matter of necessity, at least as a matter of justice to the Union men. They must be treated as a sort of subject class. It was this which made the disfranchisement more galling, and the opposition more intense.[2]

The Constitutional Convention had declared in favor of disfranchising all who had fought against the United States. In his first message, Governor Brownlow showed that he was determined to do his part toward making the declaration a law. After recommending the ratification of the 13th amendment to the Federal Constitution, he reminded the Legislature that the loyal people who had entrusted the qualifications of voters to them, wanted them to act decisively in the matter and would have no child's play. Fearing that this law would engender opposition, he asked the Legislature to place at the disposal of the Executive an effective military force, that he might be able to enforce the law when enacted.[3]

The Legislators were as zealous as the Governor. Even before he was inaugurated they had unanimously ratified the 13th amendment.[4] Afterward, in obedience to the Governor's request they introduced and passed three laws of a radical nature, viz.: those organizing a Sheriff's posse, punishing libel and sedition, and limiting the elective franchise.[5]

The bill organizing a sheriff's posse authorized the sheriff to raise twenty-five men as a county patrol to aid civil officers in enforcing order. Only those citizens unquestionably loyal to the

1. Sherman's Memoirs, I., p. 366.
2. The papers of 1865-6 are full of statements to this effect.
3. Message, Acts of 1865, p. 5.
4. House Journal, April 4, 1865.

United States were eligible to serve on this force. In addition to this posse the bill gave sheriffs discretionary power to raise a force of whatever size they might deem sufficient to capture or to disperse all opposing elements.[1] The alleged excuse for this force was the presence of guerrillas in certain parts of the state. In such cases the posse was necessary. But in many cases the power was greatly abused. The papers of the time are full of accounts of outrages attributed to this armed patrol, and it is certain from evidence available, that in many cases the patrol was guilty. The purpose of the force was really to enable the Governor to enforce the franchise law. The bill punishing libel and sedition provided that whoever should be guilty of uttering seditious words or speeches, spreading false news, writing or dispersing scurrilous libels against the State or Federal Government, should be fined and imprisoned at the discretion of the Court, and be incapable of holding any office for the space of three years.[2]

The act limiting the elective franchise was the most important and far-reaching act of the session. It was the embodiment of a purpose which had been in the minds of the Radical leaders for more than a year, and oaths had been used for that purpose at all elections since the appointment of Governor Johnson. The law provided that persons of lawful age and residence, who had entertained unconditional Union sentiments from the outbreak of the war, or who had arrived at the age of 21 years since November 4th, 1865, or who could prove their loyalty, or had been honorably discharged from the Union Army, or were Union men conscripted into the Confederate Army, or had voted at the elections of 1864-5, should be entitled to the privileges of the elective franchise.[3] All officers, civil, military and diplomatic, all persons who left Federal or State offices to aid the Rebellion, and all persons who left homes within the protection of the United States to aid the Rebellion, were disfranchised for the period of fifteen years. All others not included in these categories were denied the privilege of the elective franchise for five yeears, after which time on proof of two loyal witnesses in open court, the privilege might be restored. County Court Clerks were required to keep a registration of voters, and issue certificates. Proof under oath was to be made before them, that the persons belonged to one of the classes to whom franchise was granted. No

1. Acts of 1865, Chapter XXIV.
2. Ibid, Chapter V.
3. Ibid, Chapter XVI.

one was allowed to vote who did not hold a certificate. Any voter could be challenged by an admitted voter, and thereupon the judges of election must administer a prescribed oath. In this oath, the affiant swore that he would support the Constitution of the United States, that he was a friend of the government of the United States, that he would heartily assist the loyal people to establish the national authority over all the people of every state and territory, that he would support and defend the Constitution of Tennessee and the amendments and schedule, and the acts of the Legislature called in accordance with the schedule. Judges of election and candidates were required to take the same oath, and any person who took the oath falsely was declared guilty of perjury.

Among the resolutions which the Legislature passed at this session were those offering a reward of $5,000.00 for the apprehension of ex-Governor Harris;[1] requesting the President to proclaim the state no longer in rebellion; and asking the President for troops to guarantee to Tennessee a Republican form of government.[2]

The temper of the Legislature toward the returning Confederate troops was better shown by certain acts introduced and discussed than by the acts it really passed. May 18, a bill was introduced into the House and passed by a vote of 58 to 5, providing a fine of five to fifty dollars for wearing the "Rebel Uniform," thus punishing men without money for wearing the only clothes they had.[3] A bill was passed by the Senate depriving ministers, who had sympathized with the Rebellion, of the right to celebrate the marriage rites, and requiring them to work on the roads, pay a poll-tax and serve in the militia.[4] Another bill aimed at the prevention of a future race of Rebels by requiring every woman to take the oath of allegiance to the United States before a license should be issued for her marriage.[5] A bill prescribing a test oath for plaintiffs in lawsuits failed in the Senate by a vote of 10 to 11.

As the elections for Congressmen were to be held during the recess of the Legislature, there would be a good opportunity to observe the workings of the recent legislation. Governor Brownlow was determined to leave no means unused to keep the opposition under control. One means of doing this was the publication of proclamations and addresses to the people.

The first proclamation was issued May 20, against "Revengeful

1. Acts of 1865, p. 80.
2. Acts of 1865, p. 81.
3. House Journal, May 18, 1865.
4. Senate Journal, May 10, 1865.
5. House Journal, May 25, 1865.

Practices in East Tennessee," calling on "Rebel" robbers to betake themselves to honest pursuits, to make restitution of stolen property and reparation for wrongs done, and to cease from their threats of violence. It was manifestly unjust to charge the "Rebels" with all these disturbances. Many of them were the work of guerrillas who never were in the Confederate Army, but were merely organized bands of robbers. For much of the rest Union men were as much to blame as the Rebels, as has already been said. There was an organized effort on the part of the Union men to prevent the ex-Confederates of East Tennessee from returning to their homes,[1] and to force them to settle in other parts of the South. There were many personal grievances to settle, and many of those who returned home were indicted for acts done during the war and in military capacity. At one time there were 1,800 cases of this sort pending in the United States District Court at Knoxville.[2] But all these matters were merely local and individual and had no relation to political affairs or to the validity of the existing government, and the enforcement of law in general. So far as the people took any part in public affairs they were favorable to the existing order. The newspapers of the period are full of the proceedings of county conventions, which were unanimous in their endorsement of the Federal and State governments, and the acts of the General Assembly.

The franchise law was the only exception to the above statement. Because in some cases this law was condemned, the Governor, July 10, issued a proclamation declaring the policy he would pursue in the coming August elections.[3] He warned the people that all who should band themselves together to defeat the execution of this law, would be declared in rebellion against the state of Tennessee, and dealt with accordingly; that the votes cast in violation of that law would not be taken into account in the office of the Secretary of State; that the Governor would treat no person as a candidate who had not taken the oath prescribed in the act, and filed it with the Secretary of State. He called upon the civil authorities throughout the state to arrest and bring to justice all persons who, under pretence of being candidates for Congress or other offices, were traveling over the state denouncing the Constitution and laws, and spreading sedition and a spirit of rebellion, and

1. Press, June 10, 1865.
2. Ibid, Sept. 10, 1865.
3. Ibid, July 11, 1865.

warned judges and clerks of elections that they would be held to strict account for failure to enforce the law.

This proclamation was followed two days later by an address to the people, in which the Governor said that he had been sorely disappointed in his hopes that the whole people would welcome the return of law and order. "The spirit of rebellion still exists," he said, "and must be destroyed." In order that all might understand the basis and the character of the present government, he entered into a long history of the causes which led to the establishment of the military government and then of the present government, showing that it was the work of the man who was then President of the United States. Since the government was his work, no one could suppose that he would fail to sustain it, and by force of arms if necessary. The purpose of the address was to inspire the people with a dread of the Federal military. The Governor closed his address by assuring all that the franchise act would be enforced by the military if necessary, and all elections by illegal votes would be annulled.[1]

These measures were just the sort that one would expect from a man like Governor Brownlow, without experience in state affairs, and unable to brook opposition of any sort. It is true that there was considerable excitement as the election day drew near, but the action of the Governor only made matters worse.

All through the month of July, the candidates for Congress, Radicals and Conservatives, traversed the several districts of the state and advocated their respective claims before the public. The Radicals stood on the legality of the State Government, and the subsequent legislation, and argued that only members of their party would be admitted to seats if elected, or would be able to benefit the state if admitted.[2] The Conservatives who were also staunch Union men, and endorsed the re-organized State Government most strenuously denied the expediency of the franchise law. Some even condemned it as unconstitutional.

The election was unattended by violence in any part of the state. It resulted in the choice of N. G. Taylor, Horace Maynard, W. B. Stokes, Ed. Cooper, Wm. B. Campbell, Dorsey B. Thomas, Isaac R. Hawkins and John W. Leftwich for the districts in the order named. Notwithstanding the efforts of the Governor, five of the

1. Dispatch, July 13, 1865.
2. Dispatch, July 23, 1865.

eight, Taylor, Cooper, Campbell, Thomas and Leftwich, were elected as Conservatives and were opposed by Radical candidates whom they defeated. The whole number of votes cast was 61,783, two-thirds of the whole vote cast in June, 1861.

The following table shows by districts the vote of the two elections:

District.	Aug., 1865.	June, 1861.
I	11,345	21,678
II	12,786	20,625
III	7,848	18,813
IV	7,918	16,138
V	8,098	22,043
VI	5,156	17,150
VII	5,131	16,851
VIII	3,486	16,787
	61,783	150,085

The districts number from the east toward the west. It will be seen from the table that the loss of votes in 1865 increases as one goes west. This loss was the result of the operation of the franchise law.

Fraud was openly charged by the Radicals. After the election and before the result was known, the Governor following out the plan set forth in his proclamation and address, issued a proclamation August 11, calling upon clerks, sheriffs and loyal citizens for information as to whether the registration and election had been in accordance with the franchise law.[1] From the information thus received he found that five methods had been used in admitting persons to vote. When the applicant was known to the clerk to be a man of undoubted Union sentiments, he was admitted without question. When not so known to the clerk he was admitted upon proof of the fact by witnesses. In the third case, the applicant was admitted upon his own oath simply, or fourthly, upon the production of an oath of amnesty or allegiance, taken sometime previously, or fifthly, upon being vouched for by a civil or military officer. The first two of these methods the Governor declared to be proper and lawful, the others illegal.[2] On this ground and in accordance with the purpose previously proclaimed, he threw out and refused

1. Dispatch, Aug. 12, 1865.
2. Am. Ann. Cyclo. 1865, "Tennessee."

to count the votes of twenty-nine counties, a total of 22,274 votes, leaving only 39,509 considered as legal. The rejected vote was scattered over the whole state, but it changed the result in only one district.

In the sixth district, Dorsey B. Thomas, Conservative, ran against Samuel M. Arnell, the author of the franchise bill. Both of these were members of the Lower House of the State Legislature. By the returns from the election officers, Thomas received 2,805, and Arnell 2,350. The revised count took 2,284 votes from Thomas, and 804 from Arnell, thus electing Arnell by 1,025 majority.[1] As Mr. Arnell was the Radical leader of the House, the Governor was accused of resorting to this revision of the count in order to save him from defeat.

In the Nashville District, ex-Governor Wm. B. Campbell, who was one of five candidates, received 6,357 votes against 1,729 for Carter, his strongest opponent. But the Governor threw out all the counties but one, and the vote then stood 1,311 to 205, still a large majority for Campbell. In this instance, the Governor confessed that a majority of the votes thrown out were cast by persons entitled to vote if legally registered.[2] Thus the Governor constituted himself a committee on elections, with power to go behind the returns. He based his authority on the franchise law which required a registration of voters and certificates obtained in a prescribed manner. The law required him to certify that the members were regularly elected according to the laws of the state, which he said he could not do in face of the facts to the contrary.[3]

This was surely an extraordinary proceeding and was not allowed to pass unchallenged. On the 24th of November following both Houses of the Legislature passed, without discussion and under suspension of the rules, a resolution calling upon the Governor for the documents upon which this action was based.[4] The following day the Governor sent to the Legislature a special message embodying the substance of what has been given above, closing with the statement that the official reports of the clerks and sheriffs in response to the proclamation of August 11, as well as the original returns, were on file in the office of the Secretary of State, subject to the examination of all concerned. This did not satisfy the minority. They wanted the matter laid before the Legislature

1. Governor's Message to Legislature; Dispatch, Nov. 20, 1865.
2. Ibid.
3. Ibid.
4. House Journal, Nov. 24, 1865.

and published. Mr. Brandon of Stewart County, made a motion to that effect, which was argued for two whole days, but aside from giving the minority an opportunity to condemn the action of the Governor in unqualified terms, it came to naught. The resolution was tabled on November 28, by a vote of 34 to 25, the speaker voting with the minority.[1]

Pursuant to the terms of adjournment, the Legislature met again October 2. It was in session 239 days, but its time was mostly spent in passing private bills, or in doing nothing, as it was two months of the time without a quorum. The Governor's message laid before it reads like a mixture of a Republican campaign speech and a Thanksgiving sermon.[2] After a long harangue on secession and the war, and the parable of the prodigal son, he recommended the amendment of the franchise bill and the colonization of the negroes in Texas or Mexico, or their admission to full citizenship and suffrage, in case the franchise law should be repealed.[3] The first important act of this session was a bill to render persons of African descent competent witnesses in the courts of Tennessee in as full a manner as such persons were by an Act of Congress competent witnesses in all the courts of the United States. By express amendment this act was not to be construed to give such persons the right to vote ,hold office, or sit on juries.[4] When slavery was abolished the people thought that was the end of the matter. They did not see how the question was to grow in their hands. The first session of the Legislature refused by unanimous vote to consider a bill similar to the one just passed. The fact that they now enacted this law was an indication of the progress of the Radicals. Another step was taken in May when the Legislature passed a law giving persons of color the right to contract, sue and be sued, give evidence, inherit, and have full and equal benefit of all laws for protection of persons and property, and not be punished otherwise than whites for similar offenses.[5] In passing these laws, the Legislature sought to please the Republican leaders in Congress who had just passed the negro suffrage act for the District of Columbia, and thus to gain admission for Congressmen from Tennessee who had already been waiting in Washington six months.

The second bill of importance which passed the Legislature

1. Dispatch, Nov. 26, 1865.
2. Message, Acts of 1865-6, p. 1.
3. Acts of 1865-6.
4. Am. Ann. Cyclo., 1866, "Tennessee."
5. Message, Acts of 1865-6, p. 1.

was the amended franchise act. The Governor had recommended this in his message, and the Legislature on the second day of the session raised a committee to take the matter into consideration.[1] Before this committee was ready to report, however, Major Lewis, a member from Nashville, made an effort to bring before the House a bill representing the sentiments of the minority, repealing certain features of the first law and admitting to suffrage all who would take the oath in the President's amnesty proclamation.[2] But the Legislature had its time taken up with the negro testimony bill until its passage on the 26th of January. On the following Monday, Mr. Arnell, chairman of the franchise committee reported a bill which repealed the former law and was to take effect from the day of its enactment.[3]

The proposed new law denied suffrage to every one who had not constantly opposed secession and the Confederacy. It required all persons other than Union soldiers to prove by two legal voters that they were not subject to the disabilities mentioned in the act, and, in addition, to take the iron-clad test oath; it further provided that the Governor should appoint in each county in place of the County Clerk a commissioner of registration who should receive evidence for and against, and decide in every case whether or not to issue a certificate.[4] As the law provided for the removal of the commissioners by the Governor, it put the suffrage absolutely in his hands. After the passage of this law it would be altogether unnecessary for him to revise the returns. This bill was rapidly pushed to its second reading when a new bill, differing slightly in details, was introduced and adopted in lieu of it. This last bill was said to be the work of Secretary of State Fletcher, who presented it to the Radical caucus and said that it must be passed in its present form. It passed its first and second readings under the previous question, and was made the special order for the next day. This summary proceeding called forth protests from friends and opponents of the measure, in such numbers that the leaders pledged themselves to allow unlimited debate on the question the next day. But on the next day after two or three short speeches had been made, Mr. Raulston rose and said that he held himself bound by the pledges of no men, leaders or otherwise, and thereupon moved the previous question. In this call for the previous

1. Acts of 1865-6, p. 24.
2. Dispatch, Nov. 24, 1865.
3. Dispatch, Jan. 30, 1866.
4. Acts of 1865-6, p. 42.

question he was sustained by the whole Radical majority, including the leaders, who thus disregarded their promise.[1]

The minority, however, were not to be so surprised. They had already come to an understanding. Mr. Poston demanded a call of the roll—and finding 57 present, resigned his seat, saying that he would not be a part of a quorum to pass such a bill.[2] His resignation was followed by that of twenty others. This made further legislation impossible for the time being.

These twenty-one united in an address to their constituents, giving the cause of their resignations and their objections to the bill.[3] On March 6, the Governor issued a proclamation declaring vacant their seats, and authorizing elections March 31 to fill the vacancies. The Governor's proclamation stated that if these men were returned, and persisted in their refusal to make a part of a quorum, and a quorum was thereby made impossible, he would be compelled to turn the convicts and the insane loose upon the state, for there was no money to buy food for them.[4] But this threat was without avail. In most cases the men were returned.

After the elections, but before the new members had reached Nashville, Mr. Arnell, fearing that the Radicals would be unable to carry the measure, in the face of the opposition, although there was no quorum present, moved that the bill be declared enacted by the House, and transmitted to the Senate, inasmuch as the roll showed 57 members present when it passed its third reading. But the "Rump House" refused to pass the motion.[5]

By the 10th of April nineteen new members had reached the capital.[6] Since the resignation of these men on February 23, the Legislature had adjourned from day to day without a quorum. On the 12th, the chairman of the committee on elections offered to report, but the Speaker said that as only 53 qualified members were present, the House could not do business, and he was not at liberty to receive the report. Mr. Smith then requested that the clerk administer the oath to three Radicals, Messrs. Sheppard, Morris and Mann, which the Speaker directed to be done. This made the requisite number for a quorum, and on motion of Mr. Raulston the Franchise Bill passed its third reading by a vote of 41 to 15.[7]

The Senate had a quorum April 17, and the next day passed the House Bill on its first reading. The Senate had a franchise bill

1. Letter of Mr. Poston, Dispatch, Feb. 28, 1866. 2. Dispatch, 24, 1866. 3. Dispatch, March 13, 1866. 4. Ibid, March 6, 1866, Cyclo. 1866, p. 729. 5. Ibid, April 8, 1866. 6. Dispatch, April 11, 1866. 7. Union and American, April 13, 1866.

of its own, however, which occupied its time till May 1, when it failed to pass its third reading by 5 to 16. The next day the House bill passed its second reading and on the 3rd of May became a law by a vote of 13 to 6 under the operation of the previous question.[1]

It was estimated that, if strictly enforced, this law would reduce the electors in the state to 50,000, three-fourths of whom were in East Tennessee.[2] As members of the Legislature were by the Constitution apportioned according to the number of qualified voters, the effect was to give to East Tennessee three-fourths of the votes in the Legislature.[3]

The necessity for such a law was found only in the rapidly decreasing strength and numbers of the Radical party in the state. Additional restrictions were necessary that they might continue in power. East Tennessee was carrying out its plan, formed two years before, to be, and to control, the State of Tennessee. Whatever was necessary for Radicals was necessary for the state. They were the state.

The *Union* and *American* speaking calmly and sensibly, and even prophetically of this, said:—"It will lead to confusion and ill-blood and disgrace. To expect good from it is impossible. Though it may not now be so distinctly seen by the majority, it will soon become visible that it is full of evil, and nothing but evil. Tennessee wants peace on the basis of liberty and of constitutional laws. This, sooner or later, the people of the state will have, whatever obstructions may be temporarily thrown in their way.[4]

On the first of May a riot broke out in Memphis between the whites and blacks, which continued two days and resulted in the death or injury of many persons.[5] As a result of this the Legislature passed the Metropolitan Police Bill,[6] May 14, which provided that the police regulations of the City of Memphis should be in the hands of three commmissioners appointed by the Governor, and made it a crime for any one else to attempt to exercise any control in the city not subordinate to this board. The provisions of this act were also extended to Nashville and Chattanooga.[7] Though much opposition was manifested to this law at the time, it seems that it resulted only in good.

The Legislature tried to keep the minds of the "truly Union"

1. Union and American, May 5, 1866. 2. Ibid, May 15, 1866. 3. Constitution, Article II. Section 5 and 6. 4. Union and American, May 6, 1866. 5. Dispatch, May 5, 1866. 6. Acts of 1865-6, p. 52. 7. Acts of 1865-6.

men inflamed against the ex-Confederates by passing a resolution to the effect that Jefferson Davis and his accomplices had justly forfeited their lives.[1] For the same purpose was a bill passed by the House which disqualified all persons who had given aid and comfort to the Confederacy, from holding any office whatever, and forbade all lawyers guilty of the same offense to practice in the courts of the state.[2] The effect of this law, if it had passed the Senate, would have been to create anarchy in a large part of the state, for there were many districts where the whole population had gone with secession. The Legislature adjourned May 28, to meet November 5, 1866, but before that date the state had been readmitted to the Union.

During the spring of 1866 occurred the last act toward the separation of East Tennessee. The movement this time was caused by the same conditions which prevailed when the question was agitated in 1864, a fear that the rest of the state would get into power and control the state.[3] The confusion into which the government was thrown by the resignation of the "twenty-one," was the cause of the alarm. East Tennessee was afraid that the new franchise law would not be passed. Without it she could not long hope to control the state.

The first step in the new movement was the publication of a letter by Joseph A. Cooper about the first of April, in the Knoxville Commonwealth.[4] This led, about two weeks later, to a call signed by 45 of the leading men of East Tennessee for a convention at Knoxville, May 3.[5] The call stated that this step was taken in view of the irreconcilable differences of opinion and interests heretofore and now existing between the people of East Tennessee and those of the other grand divisions of the state.

The convention assembled on the appointed day and Judge Samuel Rodgers, former Speaker of the Senate, was chosen chairman. Among the noted men on the business committee were T. A. R. Nelson and O. P. Temple. This committee reported in favor of immediate separation, and assigned as a reason for the step, the fact that the rebels were in the majority, and were likely to control the state. For protection the Union men had been forced to enact a franchise law. As a result of this a bitter animosity had sprung up which could be obviated only by separation.[6]

1. Ibid, p. 74.
2. Dispatch, Nov. 15, 1865.
3. Speech of Nelson in the Convention, May 3, 1866.
4. Union and American, April 4, 1866.
5. Ibid, April 19, 1866.
6. Dispatch, May 6, 1866.

In a speech in favor of the report Mr. Nelson said that they wanted a state in which they could govern. This was the key-note of the whole movement. After two days' deliberation, resolutions were adopted providing for the appointment of a committee to memorialize the Legislature to authorize the Governor to provide for a vote of the people of East Tennessee on the question. The memorial was presented to the Legislature on May 16, and referred to a select committee.[1] On the 18th, this committee presented a majority report in favor of a resolution authorizing writs of election.[2] But as the franchise law had already been passed, there was now no reason for separation and the resolution failed to pass. Thus ended, and most likely for all time, the long talked of and much desired scheme for the state of East Tennessee.

But the Legislature, adjourning May 28, was soon in session again. Notwithstanding the fact that the Governor and the majority of the Legislature were following closely in the wake of the Radical leaders in Congress, Tennessee's Congressmen were still kept waiting at Washington. The 14th Amendment to the Constitution of the United States was yet demanded.[3] This was submitted to the state, June 16. Governor Brownlow, June 19, issued his proclamation convening the Legislature in extra session, July 4, to take action on the matter.[4]

There was an unusual tardiness on the part of the legislators in reaching the Capital, owing to the opposition of many members to the proposed amendment. Neither House had a quorum for several days. The Senate got a quorum first and ratified the amendment by joint resolution July 11, by a vote of 14 to 6 under the operation of the previous question, after a few speeches had been made and several amendments offered and voted down.[5]

The House did not get a quorum till the 19th. On the 11th, the Speaker was instructed by the House to issue warrants for the arrest of eight members who were staying away from the Capital to prevent a quorum. As there were only 52 members present the right of the House to adopt such a resolution was questioned.[6] But the Speaker issued the warrants and placed them in the hands of the sergeant-at-arms. On the 14th, as there was still no quorum, Mr. Arnell tried to cut the knot by offering a resolution to establish a new basis for a quorum.[7] By this resolution two-thirds of

1. House Journal, May 16, 1866. 2. Union and American, May 19, 1866. 3. Inasmuch as Tennessee was admitted immediately after the adoption of this amendment it seems that Congress considered its ratification necessary. 4. Proclamation, Acts of Ex-Session of 1866, p. 1. 5. Ibid, July 12, 1866. 6. Dispatch, July 12, 1866. 7. Ibid, July 15, 1866.

those actually holding seats in the House, instead of two-thirds of those belonging to it, were to constitute a quorum. But this resolution, though freely discussed, never came to a vote.

The Governor became exasperated on account of the delay, and on the 4th, applied to General Thomas, the commander of the department, for military assistance to compel the legislators to perform their duty. The Governor's application was referred to General Grant at Washington, who in turn referred it to Secretary Stanton. Secretary Stanton replied on the 17th, that the duty of the United States forces was not to interfere in any way in controversies between the political authorities of the state, and that General Thomas would strictly refrain from any interference between them.[1]

On the 16th, however, the sergeant-at-arms reported that he had arrested Mr. Williams at his home in Carter County, and had brought him to the Capital, where he held him under guard.[2] On the 18th, the seargeant-at-arms announced that he had arrested and brought into the hall, Mr. Martin, of Jackson County. On this same day, Mr. Williams applied for and obtained a writ of *habeas corpus*, returnable before Judge Frazier of the Criminal Court. Upon hearing the case the court ordered the prisoner discharged.[3] But the House passed a resolution denying the jurisdiction of the court, and ordered the sergeant-at-arms to hold the prisoner.[4] On the 19th, 54 members were present and these, with two under arrest in the committee-room, made the requisite number for a quorum. Mr. Mullins moved to adopt the joint resolution.[5] The Speaker announced that there was no quorum. Williams and Martin were thereupon invited in but they refused to come unless the House wished to investigate their cases. Mr. Mullins appealed to the House from the Speaker's decision as to a quorum. The vote was taken and the appeal sustained by a vote of 42 to 11. The joint resolution ratifying the 14th amendment was then put and carried by 43 to 11. Again the Speaker decided that a quorum was not present. Mr. Arnell appealed from the decision and the appeal was sustained by a vote of 42 to 11. The Speaker thereupon announced amid the applause of the House that the joint resolution was adopted. Thus ended the struggle, for this action was taken as the legal ratification of the 14th amendment.[6]

Mr. Williams, upon his release, brought suit for damage against

1. Am. Ann. Cyclo. 1866, p. 729.
2. Ibid, July 17, 1866.
3. Frazier Impeachment Trial, p. 24.
4. Acts of Ex-Session of 1866, p. 31.
5. Dispatch, July 20, 1866.
6. Proceedings in Union and American, July 10-20, 1866.

every member who had contributed to his arrest. When trying to serve the process the sheriff was ordered from the hall. The House in retaliation appointed a committee to draw up articls of impeachment against Judge Frazier, for his action in the case.[1] The Senate tried the case and convicted Judge Frazier June 12, 1867, deposed him from office and forever disqualified him from holding any office of profit or trust in the state. This disability, however, was removed by the constitutional convention of 1870, and Judge Frazier was afterwards elected to the office from which he had been deposed.[2]

The ratification of the 14th amendment, in the manner described above, gained for the congressmen from Tennessee waiting at Washington, the long desired admission to seats. The manner of this admission and the cause of the long delay will be given in the next chapter.

1. Frazier Impeachment Trial.
2. Miller's Manual, 1867.

CHAPTER IV.

FEDERAL RECONSTRUCTION.

The whole subject of the reconstruction of the seceded state turned upon the question whether they were out of the Union. The answer to this question was to determine the legal status of the states and to decide the policy of the Federal Government toward them, after the surrender of the Confederate armies. If they were out of the Union they could be re-admitted properly only by a formal Legislative act requiring the sanction of both Houses and the signature of the President. If they were states in the Union they had, as such, certain constitutional rights which the Federal Government must respect, and either House of Congress might at its own discretion admit members from those states.[1] The question was, therefore, a practical and important one.

The different answers to this question gave rise to different theories of reconstruction, and were later the cause of the long quarrel between the President and Congress. These answers were, in part at least, the result of different conceptions of "State" and "Union."

The term "state" in its fullest sense includes the three ideas of people, territory and government, but it is also capable of being used in the sense of any one of these ideas.[2] This triple use of the word led to ambiguity and confusion during the reconstruction period. Some men used the word in the sense of territory. Thus Mr. Dumont argued that the states were in the Union for, "the soil of South Carolina is within the United States just as before the war."[3] Others used the word in the sense of government. This was Mr. Sumner's idea when he declared that the states were dead, and urged Congress to proceed to establish "governments" in all the "vacated territory," providing for all the "inhabitants."[4] Mr.

1. Raymond, Globe, 1865-6, p. 126.
2. Texas v. White. 7 Wall, 700.
3. Globe, 1865-6, p. 1,473.
4. Globe, Feb. 1862, p. 736.

Beaman used the term in the same sense. "When the state becomes vacated by treason," he said, "her territory and her people still remain within the limits of the United States." [1] Again, he said: "By the action of the people in making war, the state, or the government, is out of existence. I regard the terms state and government as synonymous." [2] Still others used the term in the sense of people. Thus, Mr. Ten Eyck said: "In my opinion the people of a state constitute the state." [3] This was also the opinion of the Supreme Court.[4]

For this confusion of ideas, the Federal Constitution is in some degree responsible, for in the Constitution the term "state" is not always used in the same sense. Its most common meaning is that of an organized people within a defined territory, but in several instances it is used in a restricted sense of territory,[5] or people,[6] or government.[7] In the 10th amendment there seems to be a distinction made between a state and the people of the state.

Neither is the Constitution consistent in its use of the word "Union." In the clause "The President shall give information of the state of the Union," [8] the word means much more than in the phrase, "to form a more perfect Union." The word occurs five times in the Constitution and only twice is it used as equivalent to "The United States." [9]

Based upon these different conceptions of "State" and "Union," the question whether the states were out of the Union received from the members of Congress four answers more or less distinct. The first answer was that the states were never out of the Union, but so soon as their officers should perform their duties, the states would enjoy the privileges conferred by the Constitution, and that not by virtue of a new admission, but by virtue of the original one.[10] Mr. Yeaman said: "A formal return or re-admission of any state

1. Globe, March, 1864, p. 1,243.
2. Ibid, p. 1,244,
3. Globe, 1862-3, p. 3,140.
4. 3 Dallas, 94.
5. U. S. Const., I. 9, 5; III., 2, 3; IV., 2, 3.
6. Ibid, IV., 4-1.
7. Ibid, I., 10, 1; I., 10, 2.
8. Ibid, II., 3, 1.
9. Ibid, II., 3, 1. Ibid, IV., 4, 1.
10. Pendleton, Globe, 1863-4, p. 2,105.

to the Union is not necessary. It is sufficient that the people shall at any time resume the functions of state government compatible with the Union and with the laws and Constitution of the United States.[1] In this answer the state was conceived of as existing independent of government and as being in the strictest sense indestructible, either by its own acts or by those of the United States.[1]

The second answer was that the seceded states were in the Union and subject to the Federal law, but that their functions and rights were suspended because they were so disabled that they could not by proper officers perform the one nor claim the other. In support of this answer it was argued that "a state has certain practical relations to the Government of the United States. But the fact of those relations being practically operative and in actual force at any moment does not constitute its relationship to the government, or its membership of the United States. Its practical operation is one thing. The fact of its existence as an organized community is quite another."[2] This answer made the government of the state an essential part of the state, but it considered the government as still existing in the constitution and laws of the state. The absence of officers did not destroy the government nor the state, but only disabled the state.

The third answer was that the states were legally foreign states during the war, and conquered territory at the close.[3] By this answer the state was conceived to exist independent even of membership in the Union. The Union consisted in the relations of the states to the Federal Government and ended with a failure of the states to perform the duties imposed on them by the Federal Constitution.

The fourth answer was that the states were non-existent[4]—"that any vote of secession works an instant forfeiture of all those powers essential to the existence of the state as a body-politic, so that from that time forward the territory falls under the exclusive jurisdiction of Congress as other territory, and the state, being felo de se, ceases to exist."[5] This answer went farther than the

1. McPherson's History of Rebellion, p. 327.
2. Raymond, Globe, 1865-6, p. 121.
3. Beaman, Globe, Nov., '64, 1,243. Stevens, Globe, Dec. 1862, p. 50. Howard, Globe, 1865-6, p. 24.
4. Beaman, Globe, March, '64, p. 1,244.
5. Sumner, Feb. '62, Globe, 736.

last, and found not only membership in the Union, but the state itself, to exist in its practical relations with the Federal Government.

The first of these answers is the only one warranted by the Constitution. The third, perhaps, most nearly expressed the actual conditions,[1] but it was contrary to the Constitutional view of the war,[2] since it in fact asserted the doctrine of the advocates of secession. It set aside the supposition of the existence of loyal men in the South and would have made the United States liable for all the debts of the Confederacy.[3] All these answers were only so many attempts to harmonize the law and the facts in a case which the law did not, and was never meant, to cover. According to the Constitution, a state in the Union must have a government republican in form, whose officers have taken an oath to support the Constitution,[4] and whose citizens habitually render it allegiance and obedience. The United States must so have admitted it into the Union as to have assumed to guarantee to it this particular form of government and to have second to it as a "state" certain rights of participation in the Federal Government. These relations once established could not legally be changed by an act of the state or of the United States. This was the doctrine of the indestructibility of the states, and upon this doctrine was founded the restoration theory with which the Federal Government began the war.

According to this restoration theory the seceded states were "just as truly states of the American Union as they were before the war."[5] A formal readmission was unnecessary. The people were only to resume the functions of the pre-existing state government.[6] This was the opinion of President Lincoln given in his first inaugural address,[7] and in his first message to Congress.[8] In all his proclamations and in all his dealings with the seceded states during the early months of the war, he continued to act upon this theory.

Congress, too, early declared its adherence to this same theory.

1. G. Smith, History of U. S., p. 296.
2. Saulsbury, Globe, 1865-6, p. 28.
3. Globe, 1865-6, p. 122.
4. U. S. Const., VI., 2.
5. Globe, 1865-6, p. 121.
6. McPherson's History of Rebellion, p. 327.
7. Ibid, p. 126.
8. Globe, July, 1861, pr. app., p. 3.

On July 22, 1861,[1] Mr. Crittenden offered in the House a resolution which declared that the war was not waged for the purpose of subjugation, nor for interfering with any rights or institutions of the states, but "to preserve the Union with all the dignity, equality and rights of the several states unimpaired." This resolution was adopted by the House without debate and with only two dissenting votes. It was immediately introduced in the Senate by Senator Andrew Johnson, and was adopted by that body with only five votes in the negative, and these mostly those of Senators from Southern states then on the point of resigning their seats. This declaration of purpose adopted by an almost unanimous vote of Congress, expressed in a still greater degree of unanimity the sentiments of the Northern people.[2] The President, Congress and the people began the war with the theory that the states were still in the Union and that they had only to restore their practical relations and to resume all their former rights and privileges, and matters would go on as before.

Following the policy of the President, and in harmony with the Crittenden resolution, Congress, too, in various ways recognized the seceded states as states of the Union. As we have seen, they admitted to seats the men elected in Tennessee in August, 1861.[3] They recognized the Pierpont government in Virginia and on its authority formed the State of West Virginia. In apportioning members in March, 1862, they included all the Southern states and assigned to them their full number of Representatives.[4] In the revenue and direct-tax laws, the Southern states were made to bear their part. Until December, 1863, all the states were called on alike for bills and resolutions. Even as late as 1865 the Southern states were counted as states in the Union in ratifying the 13th and 14th amendments.

Thus the President and Congress, by their acts and declarations, stood pledged to a simple restoration of the states when the war was over. When Tennessee was reclaimed, the President appointed Andrew Johnson to assist the people to restore their government, and the Senate promptly and unanimously ratified the appointment,

1. Globe, p. 222.
2. Globe, p. 257-265.
3. Globe, Dec., 1861, p. 21.
4. Globe, 1865-6, p. 352.

thereby giving additional evidence that they considered the plan as their own.

The restoration theory was founded on the doctrine that a state cannot commit treason, a doctrine which was maintained by Democrats and Republicans alike, but for different reasons. The Republicans held that secession and war were not acts of the states, but of certain illegal combinations of individuals whose acts did not affect the status of the states. Only the individual men who performed these acts were guilty o ftreason.[1] The Democrats held that secession was, indeed, a state act, but that the states were not guilty of treason, for they were not subjects of the Federal Government.[2] In upholding the doctrine both Republicans and Democrats made a distinction between a "state" and "the people of a state," which the Supreme Court had declared was an impossible distinction.[3]

The government adhered to the restoration theory till the fall of 1863, when both the legislative and executive branches advanced to a new position. Three years of civil war had caused them to give up the theory of the indestructibility of states with which the war was begun, and to accept the view that the states were so disabled by the subversion of their governments that the Federal power was necessary to re-organize them and that certain conditions must be imposed on them and certain changes made in their constitutions precedent to their reädmission to a part in the general government. This was a radical departure from the principles held heretofore. The imposition of conditions on the states was equivalent to the re-creation of the states, not their restoration, according to the former theory. To distinguish this new theory from the former one it may very properly be called the Reconstruction theory, using the word in its active signification.

This change in the policy of the government had been gradual and was caused by a change in the people produced by the prolongation of the war. Every defeat of a Federal army was treasured up against the Southern people and increased the feeling that some punishment ought to be put upon the states for their secession, and that some provision ought to be made as security for the future.

1. Raymond, Globe, 1865-6, p. 121. Stewart, Ibid, p. 1,437.
2. Latham, Globe, 1865-6, p. 139.
3. 3 Dallas, 94.

Added to this feeling, was the desire, if not the absolute necessity, on the part of the government to deal in some way with the question of slavery in the states. This feeling and this desire or necessity caused men to view the question of the reëstablishment of the Union in a new light.

In accordance with this new theory both the President and Congress proposed each a plan of reconstruction and each plan found its warrant in the same constitutional provision, the clause guaranteeing a republican form of government to every state in the Union. The cause of this double plan of reconstruction was an ambiquity in the language of the clause, which says, "the United States shall guarantee." If it had named the President or Congress as the guarantor, there could have been no grounds for dispute, and the long contest between the authorities and the long delay in the reconstruction of the states would have been avoided.

In the contest between Congress and the President the question was, which had the right to act as guarantor for the United States. In its favor Congress had the opinion of the Supreme Court that under the guarantee clause the right to determine what government is republican in form belongs to the Legislature.[1] While the President, as commander-in-chief of the Army and Navy, was presumably the proper authority to suppress in the states any hostile military power either foreign or domestic, and, as Chief Executive of the United States, to enforce the Constitution and the laws when that military power had been overthrown.

Congress argued that since the governments of the states were subverted the re-admission of the states was equivalent to the admission of new states, which, it cannot be denied, is a legislative act. The President denied that the re-organization of a state under a constitution already recognized by Congress was the same as the admission of a new state. He maintained that the Constitution compelled him to assist and to encourage the people to reörganize the state governments under the existing constitutions. This view seems to be warranted by the Constitution. Whatever power Congress may claim over the reädmission of the states, the reörganization of the civil power within them seems to be entirely beyond the purview of its authority.

1. Lather vs. Borden.

The President's plan confined the action of Congress to the admission of members by the respective Houses. In this he seems to have been sustained by the opinion of the Supreme Court in the very case upon which Congress based its authority. The court said: "When Senators and Representatives of a state are admitted into the councils of the Union, the authority of the government under which they are appointed as well as its republican character is recognized by the proper constitutional authority."[1] Although the court declared that the right to determine what government is republican in form belongs to Congress, it seems to have limited its action, in recognizing the government, to the separate action of the Houses in the admission of members.

But even if one should grant the extreme claim of Congress that it had jurisdiction over the whole question of the reörganization and the re-admission of the states, one cannot help feeling that it acted unwisely in the manner and means it chose to assert that right. A much better way would have been to have allowed the President to reörganize the states, since he had begun the work, and to have required the joint action of the two Houses for the recognition of the governments thus formed, before the admission of Senators and Representatives, as was in fact done in the case of Tennessee. This would have accomplished the end that Congress had in view, without challenging the action of the President, and without laying Congress open to the charge that it entered the contest for the sake of power.

The first indication of a change in the policy of the President was his Emancipation Proclamation. The change was complete in the Proclamation of Amnesty and Reconstruction, December 8, 1863. The details of this plan have been sufficiently given in the chapter on "Military Government." The main features to be recalled here are that the President agreed to recognize the governments of the seceded states, organized according to certain prescribed rules, as the governments republican in form to be protected by the President from invasion and domestic violence, and that he left wholly to Congress the right of recognizing the governments by the admission of Senators and Representatives from those states. This was the Presidential plan of reconstruction which was ad-

1. Lather vs. Borden.

hered to by President Lincoln as long as he lived, and which, adopted by President Johnson, remained in force till March, 1867.

The President was the first one to propose a plan of reconstruction, but it pleased no party. "Democrats and Republicans joined in one cry, and both, as if inspired with the same motive, fell upon it, stripped it of its raiment, and lashed it in mockery naked through the world." [1] The Democrats objected to it on account of its unconstitutionality, and the Republicans, because it assumed the right of the President to control the re-organization of the states to the exclusion of Congress. Everything which the President had ever done was criticized, by one or the other party, or by both, in the most vehement manner.

From the very first there had been in Congress evidences of radicalism and opposition to the restoration theory. As early as July, 1861, in the debates on the Crittenden resolution,[2] Mr. Sherman had said, "All must be subjected to the Constitution, but we will give them all rights under the Constitution." The use of the word "give" leaves us in doubt whether he meant that Congress would allow the states to take their rights and privileges granted by the Constitution, or that Congress, by legislative enactment, would bestow these upon the states.

Senator Baker, of Oregon, in the same debates, was more explicit. He said: "It may be that instead of finding within a year loyal states sending members to Congress and replacing their Senators upon this floor, we may have to reduce them to the condition of territories and send men from Massachusetts and Illinois to control them, and if there were need to be so, I would risk the stigma of being despotic and oppressive rather than risk the perpetuity of the Union of these States." [3] A week later Mr. Thaddeus Stevens sounded the key-note of his policy of reconstruction. In the debate on the confiscation bill he said, "Mr. Speaker, I thought the time had come when the laws of war were to govern our action. I hold that the Constitution has no longer the least effect upon the states." [4]

On the first day of the next session, an effort was made to have

1. Scott, Reconstruction During Civil War, p. 273.
2. Globe, 69.
3. Globe, July, '61, p. 69.
4. Globe, p. 2,282.

the Crittenden resolution reäffirmed by Congress, but the motion was laid on the table in the House by a vote of 71 to 65, which action indicated that a change had already taken place in the sentiments of the members of that body.[1] Frequently during that and the following session resolutions of a similar character were reintroduced and always tabled with ever-increasing majorities.

In February, 1862, Mr. Sumner introduced in the Senate a series of resolutions which set forth his theory of state-suicide and his plan of reconstruction.[2] And a few days later Mr. Morrill, of Maine, declared that there was no limit to the powers of Congress, that it possessed the "absolute powers of war."[3]

In this same month efforts were made in both Houses to have Congress provide by general law for the reconstruction of the Union. A bill was reported in the Senate which provided for a governor and three judges to be appointed by the President, who, acting jointly, constituted a legislature with power to change the laws of the state. The bill was discussed at some length, but the influence of the Crittenden resolution was still too great. It was tabled.[4] in March, 1862, Mr. Ashley reported a bill in the House, similar to the one reported two years later, but it was laid on the table, without discussion, by a vote of 65 to 56. This vote, however, is significant, as it indicates a great change in the sentiments of the House, from that expressed in the Crittenden resolutions.

If Congress had adopted some plan of reconstruction when it had the subject under consideration, the future contest between it and the Executive would have been avoided. But Congress, unable to agree, laid the bills on the table. Unfortunately the question of reconstruction could not be laid on the table. Necessity compelled the President to act. Then Congress, under the influence of the war spirit and being backed by the decision of the Supreme Court before mentioned, looked with jealousy upon the action of the President as a usurpation of powers rightfully belonging to itself, and determined to take steps to carry into effect in its own way the Constitutional guarantee to the states. Therefore, just one week from the day of the President's Amnesty Proclamation, on motion

1. Globe, Dec. 4, '61, p. 15.
2. Globe, p. 736.
3. Globe, Feb. 25, '62, p. 942.
4. Globe, 1862-3, p. 3,188.

of Mr. Henry Winter Davis in the House a resolution was adopted by a vote of 89 to 80, providing for a committee with instructions to report bills necessary to carry into effect this guarantee.[1]

The committee spent two months of anxious labor in trying to harmonize the various and conflicting elements of the Republican party. On the 15th of February, Mr. Davis, as chairman, reported a bill which authorized the President to appoint in each reclaimed state a Provisional Governor to take charge of the civil administration until the people should organize a government in the manner and under the conditions specified in the bill.[2] A registration of all white voters by United States marshals was required. Whenever a majority of these voters took the oath of allegiance to the Constitution, the loyal people were to elect delegates to a convention which should amend the state constitution so as to disfranchise all persons who held any office, state or Confederate, under the usurping power (except ministerial offices and officers in the Army and Navy below the rank of a colonel and lieutenant); to abolish slavery and guarantee freedom, and to repudiate all debts created by the usurping power. These amendments were to be ratified by the people. The Provisional Governor was to certify to the President the adoption and ratification of these amendments. The President, after obtaining the consent of Congress, was to recognize, by proclamation, the re-organized government as competent to elect Senators and Representatives. Not until after this had been done could congressmen and presidential electors be legally chosen. Until this work was completed the Provisional Governor was to remain in charge of the civil administration and enforce Federal laws those of the state enacted before secession.[3]

The plan proposed in the bill, differed little from the Presidential plan. They agreed generally in details and both found their warrant in the same constitutional provision. There was one essential difference, however. The Congressional plan required the consent of Congress before the President could recognize the governments of any of the states as being republican in form, while the Presidential plan restricted the action of Congress to the admission or rejection of Senators and Representatives. This difference, how-

1. Globe, Dec. 15, '63, p. 212.
2. Globe, p. 668.
3. Globe, 1863-4, p. 3,448.

ever, was sufficient to put the whole question of reconstruction under the control of Congress, if the bill became a law.

The bill gave rise to long and heated debates. Instead of harmonizing and unifying the various elements in Congress, as it was intended to do, it served rather to make more distinct the lines of clearage between them. Five factions more or less distinct appeared in the House.

The first of these was led by Mr. Davis himself, and it held to the principles of the bill that the states were in the Union, but that they were dead and required Federal authority to revive them. In introducing the bill Mr. Davis bespoke for it the support of every member of Congress, for in his opinion it proposed the only rational plan of keeping the peace and administering the Civil Government in the seceded states, a duty which was imposed upon Congress until the people should submit and re-organize a government which Congress could recognize as the one to be guaranteed. In the course of his speech he severely criticized the Presidential plan, which action set in clear light the ever-widening gap between the President and the majority in Congress.[1]

The second was the Radical faction, led by Thaddeus Stevens, and it boldly maintained that the states were out of the Union, in the condition of foreign states, and that they would come back into the Union only as conquered territories, wholly subject to the power of Congress, which had a "plenary, supreme, and unlimited jurisdiction" over them. This faction opposed the bill because the bill recognized the seceded states as possessing rights under the constitution. They found the right of Congress to interfere in the affairs of the states not in the Constitution, but in the law of nations.[2] They fiercely attacked the Presidential plan and scouted the idea that the Executive could transform rebellious states into oyal ones.[3] This faction was so small that Mr. Stevens boasted that he stood almost alone, but he was sure that the majority would soon adopt his views.[4] This boast came to pass. The Radical faction became more and more numerous, until it finally captured the Republican party, and with it, Congress.

1. Globe, 1863-4, App. p. 82.
2. Globe, Jan. '63, p. 239.
3. Globe, Jan. '64, p. 316.
4. Globe, 1862-3, p. 244

The third faction consisted of those members of the House who adhered to Summer's theory of State-suicide.[2] They were led chiefly by Mr. Beaman, who held the opinion that the states had ceased to exist, but that the guarantee clause gave Congress power to create new states and to impose upon the people any conditions compatible with a government Republican in form. He was in favor of the bill and endeavored to harmonize the Davis and Stevens factions with his own. He regarded the difference of opinion as one rather of terms than of ideas, of theory, than of practice. "The important question," he said correctly, "was not what term would apply most correctly to the states, but what could be done with them."[1] If the state was abrogated Congress could permit a new creation under such restrictions as it chose to direct. If the state survived, but its constitution and government were destroyed, Congress could allow a re-organization under whatever terms it wished. If the state had become a foreign power, Congress might treat it as a part of the national domain and re-admit it as a new state. "In either case we may provide for her people a suitable government for such time as she may be unable to resume her place in the Union."[2]

The fourth faction was composed of those who maintained that the re-organization of the states was properly the work of the Executive, and considered his plan the best way to deal with the subject. They contented themselves with voting against the bill, without otherwise opposing it.

The fifth and last division was the Democratic party, which by this time was reduced to a mere party of protest. Mr. Pendleton spoke for the party. In opposing the bill he argued that if the acts of secession were invalid, they had no effect and the states were still in Union. Their constitutions were not abrogated, but so soon as their officers performed their duty, the states would resume their rights and privileges. "The acts of secession," said he, "are not invalid to destroy the Union and valid to destroy the state governments."[3] He maintained that the states were entitled to all political rights. Thus he set forth the doctrine of the indistructibility of the states which the Democrats still held and continued to hold throughout the period of reconstruction. They refused to unite with the

1 Globe, March, '64, 1,244.
2. Globe, March, '64, p. 1,244.
3. Globe, p. 2,105.

moderate Republicans in securing mild conditions of reconstruction, until the moderate men themselves became radical and then the Democrats were overwhelmed.

The debates on the bill continued till May 4, when it passed the House by a vote of 76 to 66, and was immediately reported to the Senate. It remained in the hands of the Senate Committee till May 27, when Senator Wade reported it, and appeared as its champion. He considered the passage of the bill a necessity. He approved of it because it discarded the theory that the states could lose their rights. "Once a state, always a state," said he. In the course of his speech he took occasion, as Mr. Davis had done in the House, to attack the Presidential plan, declaring it to be "absurd" and "contrary to Republicanism."[1]

An effort was made to amend the bill so as to prevent any of the seceded states from casting votes for President until the war had been declared at an end, but this failed. Senator Summer opposed the bill, and wished the Senate to declare by resolution that the states were "without title to representation," until they had been "re-admitted by a vote of both houses of Congress,"[2] but the Senate refused to act on his resolution. The bill was delayed in the Senate, perhaps, purposely,[3] until July 2, when it was passed by a vote of 26 to 3, only a few hours before the sine die adjournment of Congress.

Congress had now passed the bill, and in doing so had challenged the actions and policy of the President in presuming to meddle with the re-organization of the states, and had asserted its own paramount authority over the whole subject of reconstruction. What would the President do with the bill? Would he yield to the views and wishes of the majority in Congress, and sign it, or would he set the majority against him by vetoing it? He did neither, but held it a few hours until the adjournment of Congress, when it failed to become a law by constitutional provision, without his taking the responsibility of vetoing it. This action of the President deprived Congress of a year's hard work, and the leaders, feeling themselves

1. Globe, July, '64, p. 2,449.
2. McPherson's History of Rebellion, p. 320.
3. Wade-Davis Protest; Scott, Reconstruction, etc., p. 412.

out-generaled, departed sullenly to their homes, resolved on vengeance at the first opportunity. But the nomination of the President, a month before, for a second term, and the certainty of his reelection gave him a feeling of security, and he resolved to lay the subject of the contest between himself and Congress before the people and ask them to pass judgment upon it. He felt himself secure with the people if he should only set his action and his policy clearly before them. Accordingly, July 8, he issued a proclamation, reciting the provisions of the bill and giving his reasons for not signing it.[1] While approving of the measure as "one proper plan," he declared himself unwilling by signing it to be committed to any single plan, especially to one which would result in overthrowing the free state governments already set up in Arkansas and Louisiana.

If the President had remained silent, the Congressional leaders and the friends of the bill would have been unable to say anything against his "pocket veto." But now that he had laid the matter before the people, these leaders resolved on a vigorous protest against his action, despite the fact that he had been the unanimous choice of his party for a second term. The protest or manifesto, addressed "To the Supporters of the Government," was published July 12th, and signed by Wade and Davis, who had reported the bill in the Senate and House respectively.

The protest was a rather lengthy document. It denied every statement the President had made in his proclamation, characterized his action as "dictatorial usurpations," and discussed the claim of Congress to the exclusive jurisdiction over the reconstruction of the states. It attacked the President's plan of reconstruction, by describing the state governments of Arkansas and Louisiana which had been formed in accordance with that plan, and which the President had said he was unwilling to overthrow, as "mere creatures of his will—mere oligarchies imposed upon the people by military order." In closing, the President was warned that "he must confine himself to his executive duties—to obey and execute, not to make the laws."

The underlying motive of the protest is seen in this sentence: "Congress passed a bill; the President refused to sign it, and then

1. Scott, Reconstructon, etc., p. 410.

by proclamation puts as much of it in force as he sees fit, and proposes to execute those parts by officers unknown to the laws of the United States and not subject to the confirmation of the Senate." This made more than ever clear what had been apparent from the beginning of the session, that the question at issue between the President and Congress was merely a contest for power.[1] Congress had been unable to provide any plan of reconstruction. The President had proposed one and had begun to execute it, when Congress challenged his action by asserting its own exclusive jurisdiction over the reconstruction of the states. The President had bided his time till the passage of the bill, when he put it in his pocket, and, exultant with victory, asked the people to stand by him. The Congressional leaders, smarting under defeat, angrily attacked him, hoping thereby to win the people to their side, but hoping in vain.

This episode of the proclamation and protest, whereby both the President and Congress appealed to the people, closed the first engagement in the contest between them, leaving the President victor for the time being.

As both the Presidential and Congressional plans found their authority in the guarantee clause of the Constitution, the debates on the Wade-Davis bill very properly turned on the meaning of that clause. Then, as thereafter the interpretations put upon the clause by the different members served as a sort of political weathercock to indicate their feeling and attitude on the questions connected with the reconstruction of the states. It has already been shown that the ambiguity in the wording of the clause led to the two plans of reconstruction, and, by rousing the passions of the parties, to the long contest, and that it was finally responsible for military reconstruction.

But a second question arose as to what was a government republican in form. Was the authority, granted by this clause to the United States, limited to the re-establishment of the former state governments which had already been pronounced republican in form by Congress, or did that clause give authority to demand certain changes in the former constitutions? The Democrats, still holding to the doctrine of the indestructibility of states, maintained that the guarantee clause gave the United States no power to

1. S. S. Cox, Union, etc., p. 352.

demand changes in the state constitutions; that the United States had never claimed that authority before the war, and that the war gave no new power, but only vindicated the right to exercise the former power; that any change in the constitution of a state was equivalent to a new creation of the state, which could be done, only by the people of the state, acting in accordance with that constitution. They argued, further, that the governments of the seceded states were as republican in form as they were before the war, and having once been recognized as of the proper form, the United States Government had no grounds for interference, but was bound by the very clause in question to sustain them against invasion and domestic violence.[1] In support of this position Senator Carlyle quoted from Madison in the Federalist as follows: "But the authority [under this clause] extends no further than to a guaranty of a republican form of government, which supposes a pre-existing government of the form to be guaranteed as long, therefore, as the existing republican forms are continued by the states, they are guaranteed by the Federal Constitution. Whenever the states may choose to substitute other republican forms, they have a right to do so, and to claim the Federal guarantee for the latter."[2] From this, he concluded that the Federal authority was limited to a re-establishment of the state governments as they existed before secession. "The guarantor," said he, "is not a principal to a contract and can make no changes in it."

This view, however, was not held by the majority in Congress. In the debates on the Wade-Davis bill, Mr. Davis said that in his opinion the power granted by the guarantee clause was similar to that of admitting new states,[3] and that it gave the United States the right to demand such changes in the constitutions of the states as were compatible with the results of the war. This interpretation was sufficiently broad to admit the views of all Republicans, for the right of the United States to demand certain changes in the state constitutions was the essential principle of reconstruction as distinguished from restoration, and was the basis of both the Presidential and Congressional plans. All Republicans found

1 Globe, April, '64, p. 1,739.
2. Fed. No. 42, Dawson, p. 302.
3. Globe, 1863-4, App., p. 82.

in the clause the power not only to restore "the Union," but to construct "a better Union."

Mr. Beaman held in effect the same view as Mr. Davis. He did not believe that Congress had a right to demand changes in the constitutions of the states, nor could it guarantee that the states would establish governments republican in form, but it could govern the states until they did form such a government as Congress could recognize.[1] Mr. Stevens held that the clause bestowed upon Congress a "plenary, supreme, and unlimited" power over the states' governments, which Mr. Pendleton declared would subject every state in the Union to the caprice of Congress, which might at any time decide that any state government was not republican in form. Mr. Boutwell thought Mr. Pendleton's objection was not a valid one, for in his opinion, Congress had the right to change its opinion respecting any state government, and having once recognized it, could overthrow it if a controversy should arise concerning it.[2] Mr. Sumner called the guarantee clause "the sleeping giant," and congratulated Congress that "the giant" had been awakened. He found in it authority for doing all things.

In the subsequent history of reconstruction, no change was made in the interpretation placed upon the guarantee clause by the 38th Congress. The principle adopted by Mr. Davis was never departed from. There was, however, and continued to be, a disagreement as to the extent and character of the changes "compatible with the results of the war." From the passage of the Wade-Davis bill there is a constant change toward radicalism, and the changes demanded of the states become more and more numerous. Finally, anything ethically desirable, found its constitutional sanction in Mr. Sumner's "sleeping giant."

The change of the Federal Government from the theory of restoration to that of reconstruction, from the doctrine of the indestructibility of states, to the doctrine that the guarantee clause gave the United States power to demand such changes in the constitutions of the states as were compatible with the results of the war, has been insisted upon because of its importance. A knowledge of this change as well as of the ever-increasing tendency of Congress to set aside the limitations placed upon its action by the Con-

1. Globe, Dec., '64, p. 2.
2. Globe, Nov., '64, p. 1,244.

stitution and to increase the number and scope of the conditions imposed upon the states, is absolutely necessary to a correct understanding of the history of reconstruction. In this change and in these tendencies is the whole history of the period. If the doctrine once be granted that the Federal Government could impose conditions upon the states precedent to the admission of Congressmen there was no logical stopping place short of the position of the Radicals that secession and war destroyed the state governments and put the peoples and territories under the control of Congress. Any position short of this was merely a matter of policy. Whenever it became desirable to carry the doctrine to its logical conclusion, men would not be wanting, who would do it. The Democrats and the Radicals held the only logical views, and they were the only men to adhere consistently to their views to the end. The one view found its warrant in the letter of the Constitution, the other in necessity and the laws of war.

The majority in Congress in 1864 held a middle ground and imposed rather mild conditions on the states. The Democrats and the Radicals held the two extremes. The majority agreed with the Democrats at the beginning, with the Radicals at the close of the reconstruction period. The time which the majority required to make this change from the one to the other extreme—from the doctrine that a state is indestructible to the doctrine that the maintenance of secession by force works a total abdication of all rights under the Constitution—was the time required to solve the problem of reconstruction. This change can be seen in a general way in the character of the different Congresses. The 37th Congress stood for restoration, the 38th Congress, for the Wade-Davis plan of reconstruction, and the 39th Congress, for the military reconstruction. But the change went on gradually and rapidly from day to day, and can readily be followed in the acts and utterances of Congress, which became more and more radical and revolutionary. Senator Browning, of Illinois, described the general tendency when he exclaimed: "Timid measures are treason now. It is bold, active, decided men, men with nerve enough to neglect precedent and all the past, and with resolute hand reach forth to grasp the future, that we want in this hour." Constitutionalism was ridiculed and every infraction of the Constitution and ancient prin-

ciples of interpretation was justified by the plea of necessity. In the end the Radicals prevailed, and the boast of Mr. Stevens, that the majority would overtake him and go along with him, became a fact[1]

The history of reconstruction in Congress from the passage of the Wade-Davis bill to the re-admission of Tennessee, from July, 1864, to July, 1866, can be given in a few words. There were no new theories advanced, no new plans, no new arguments. In all the debates, there appeared the same differences of opinion, and the same divisions into factions, as in 1864. The only difference was a gradual change toward radicalism, already spoken of, a development along lines previously laid down.

Throughout the year 1864, the Presidential plan was the only one before the people. During the year governments had been re-organized in Arkansas and Louisiana, and when Congress met in December, Senators and Representatives from those states were waiting in Washington for admission to seats. But Congress, especially the Radical faction, was not disposed to submit tamely to what they called the "dictatorial usurpations" of the Executive. It was everywhere apparent that a conflict was pending, and this was soon precipitated by the report of the committee on credentials, which laid before the House the question of the recognition of the government of Louisiana, organized under the Presidential plan.[2] The debates on the question severely criticized the action of the President, and both Houses, by formal vote, refused to recognize his work as a legitimate state government. The debates on the joint resolution declaring the seceded states not entitled to representation in the Electorial College gave another opportunity to the Radicals to vent their spleen against the President, and the adoption of that resolution was another blow to the Presidential plan.[3]

Congress also made another attempt to pass the Wade-Davis bill. December 15,[4] Mr. Ashley introduced the bill, which he withdrew January 16, in order to substitute another recognizing the governments of Arkansas and Louisiana and providing for negro suffrage. This last went over till February 20, when, after a long de-

1. Globe, Jan. '63, p. 243.
2. Globe, Dec., '64, p. 2.
3. Globe, Feb., 1865, p. 533.
4. Globe, p. 668.

bate, Mr. Ashley withdrew it and substituted the original bill. The debates on these bills are a repetition of those of the last session. All the withdrawing and substituting resulted from the old schism in the House, which had been increased by the organization of governments in Arkansas and Louisiana. A large number of members were unwilling to imperil the work already done there, by the adoption of some different plan. The radical and conservative members alike opposed the bill recognizing those states, the one because they thought the government illegal, the other because of Negro suffrage. The bill was laid on the table Feb. 23, by a vote of 91 to 64, and Congress adjourned March 4, without further action. Another year had passed and Congress had been unable to provide by law for the reconstruction of the states.

The chief cause of the failure of Congress to pass the bill was the belief of Mr. Ashley and his friends that the members of the next Congress, who were already elected, would be more advanced in opinion and would consent to a more radical measure. "I do not expect to pass this bill now," he said. "At the next session, when a new Congress fresh from the people shall have assembled, with the nation and its representatives far in advance of the present Congress, I hope to pass even a better bill."[1]

At the time of the adjournment of Congress the collapse of the Confederacy at no distant date was plainly apparent. The end came sooner than was expected. Within a month the surrender of Lee and the abdication of the secession state governments left the South wholly destitute of any sort of government. The failure of Congress to provide for the reconstruction of the states, left the President free to carry into effect his own plan. As the question of reconstruction could be laid on the table now, even less easily than heretofore, it was necessary for him to undertake immediately the re-organization of governments in the states. He had already taken the first steps toward this re-organization when his life was ended April 14, by the act of the assassin.

Judged in the light of its effect on Tennessee the assassination of President Lincoln seemed to the Radicals in the state like a special providence in its behalf. The new state government had scarcely been in operation two weeks, when their former Gov-

1 Globe, '64-5, p. 1,002.

ernor, the man who had been foremost in the re-organization of that government, was unexpectedly placed at the head of national affairs, where he could guide the work of reconstruction and assist the state in regaining its rights and privileges in the Federal Union. If there had been doubt of the attitude of President Lincoln toward the new government, there could be no doubt of the hearty coöperation of President Johnson, who had taken such an active part in its organization, and whose whole purpose was centered in the complete restoration of the state.

Viewed, however, in the light of the subsequent history of the general question of reconstruction, the death of President Lincoln was a great disaster. Not that he would have been able to prevent a conflict with Congress, for this already existed, and was certain to become more serious as the question pressed for immediate settlement. But having brought to a successful close the great Civil War, President Lincoln would have been far too popular, and respected far too highly for his experience and wisdom, for Congress to have attempted to oppose him as they did President Johnson.

The fact that President Johnson was a new man in the Executive chair, and especially the fact that he was from a slave state, and from a state, too, not represented in Congress, caused Congress to look with suspicion on all he did, and to fear that he would deal too leniently with the Southern states in their reconstruction, and especially in questions concerning the negroes. These considerations, and the additional fact that he, by temperament and disposition was not so well fitted as President Lincoln to draw to his support the different factions in Congress increased the opposition and widened the breach already existing between the President and Congress.

The death of President Lincoln made no change in the policy of the Federal Government toward the seceded states. President Johnson succeeded naturally to the policy and plan hitherto pursued by the government. He, as every one else, understood this policy to be the "promptest possible restoration of civil government in the states by the aid of Executive power."[1] As this plan required no aid from Congress, it was fortunate that Congress was not in session. The new President indicated the policy to be pur-

1. Herbert, Noted Men of the South, p. 8

sued by retaining the cabinet chosen by his predecessor, who were known to be in favor of the Presidential plan.

The sudden collapse of the Confederacy was remarkable. Within six weeks of the surrender of Lee not a soldier was in arms. The authority of the United States in all the departments of the government was everywhere re-established. The last of the Confederate armies surrendered in Texas, May 26, and three days later President Johnson issued his Proclamation of Amnesty. The same day he published the plan of re-organization prepared by President Lincoln[1] and appointed W. H. Holden to execute the plan in North Carolina. This plan was substantially that of December 8, 1863, and differed from the Wade-Davis bill chiefly in restricting the action of Congress to the admission of Senators and Representatives by the respective Houses. Similar proclamations followed soon for all the seceded states.

The people of the Southern states accepted the plan of the President with such readiness, and returned to their allegiance to the Constitution with such unanimity, as to alarm the Republican politicians, and to inspire distrust in the minds of the Northern people. There is, however, every reason to believe that the Southern people were acting in good faith.[2] Ever since the beginning of the slavery agitation, they had looked upon the Constitution as protecting slavery, and were as devoted to it as the Northern people were to the Union. They carried what they conceived to be the constitution of their fathers into secession with them and fought to maintain it. When the war was over, and secession and slavery were forever gone, they felt that they were not returning to the Constitution but that they were bringing what was left of it back with them.[3] They had never known any other. This is why the people manifested a greater unanimity in returning to the Union than in going from it.

During the spring and summer of 1865, President Johnson removed the restrictions on commerce,[4] revoked the order suspending the writ of *habeas corpus*,[5] and declared the war at an end in all

1. McCulloch, Men and Measures of Half o Century, p. 378.
2. Report of General Grand, Dec. 18, 1865.
3. The surrender of the South was not to the North, but to the Federal Government—the Constitution became the treaty of peace.
4. June 13, 1865.
5. Dec. 1, 1865.

the states east of the Mississippi.[1] When Congress met in December eight states had been re-organized, so far as lay in the power of the people. All offices were filled by men loyal to the Constitution, and Federal and state laws were everywhere enforced. The 13th amendment had been ratified by the requisite number of states, five of the re-organized states being counted among the number. The question was no longer whether the President or Congress should re-organize the states, for rightly or wrongly, they had been re-organized by the President. Everything was done and Senators and Representatives were waiting in Washington for re-admission. The question now was whether a Republican Congress should admit Democratic members from the Southern states, or overthrow the governments established in those states and impose military governments upon them. In doing the latter Congress was influenced by questions of policy and politics rather than by questions of law. To provide for the security of the freedmen and to secure the continued supremacy of the Republican party in the Federal Government, were the two purposes which lay nearest the hearts of the Radicals in Congress. They saw the means of gaining both in negro suffrage. To force this upon the states they must be kept in tutelage under military government.[2]

We have now pursued the subject of Federal reconstruction to the close of 1865. In this review it has been the constant aim to make clear the departure of the government from former constitutional principles, the attitude of Congress toward the question of reconstruction, its ever-increasing radical tendency and the grounds of dispute between it and the President. It will be remembered that Congress in the Wade-Davis bill adopted the hitherto unheard of principle that the recognition of the state governments by the joint action of the two Houses, was necessary before Senators and Representatives from those states could be admitted to seats, and that it justified the imposition of conditions upon the states on the ground that the guarantee clause gave Congress the right to demand whatever changes in the state constitutions it thought compatible with the results of the war. These doctrines, in the hands of the Radicals, who were soon to capture Congress, were to effect, not the restoration, but the re-creation of the states.

1. April 2, 1866.
2. S. S Cox. Union, etc., p. 25.

To this point the reconstruction of Tennessee and that of the other states, have gone hand in hand. From this time on, however, Tennessee, in the minds of all public men of the time, stood in a class by itself,[1] and we must now confine our attention exclusively to the history of the re-admission of that state.

When Congress met in December, Senators and Representatives from Tennessee were waiting in Washington. But long before that time the question of their admission to seats began to be discussed. Early in September, General Rosseau, in command at Nashville, wrote to certain members of the delegation and asked them pointedly what attitude they would take toward the administration if that should be admitted.[2] They replied that they would support the policy of President Johnson and the Federal Government. These answers were published in Northern papers, and many public men declared themselves in favor of admitting these men at the opening of the next session.

But a month before the opening of the session, Mr. McPherson, clerk of the House, announced his decision not to put on the official roll the names of any men claiming to be elected from any Southern state.[3] This decision of the clerk was endorsed by the Republican caucus held at the opening of the session.[4]

Congress assembled at noon, December 4, and when the Clerk, in calling the roll, reached Indiana, Mr. Maynard, from the First District of Tennessee, rose and attempted to speak, but the Clerk would allow no interruption of the roll. At the close of the roll-call Mr. Morrill moved to proceed with the election of Speaker, when Mr. Maynard again attempted to obtain the floor. He was called to order by Mr. Stevens on the ground that his name did not appear on the roll of the House. The Cerk sustained the point, and the House decided to proceed with the election of Speaker.

Early in the session Congress adopted a concurrent resolution providing for a joint committee to take into consideration the whole

1. Globe, 1865-6, p. 1,306. Colfax assured Maynard before the opening of Congress that he favored admission of Tennessee, and would speak in favor of it. Cincinnati Gazette, Dec. 20, 1865.
2. Dispatch, Sept. 20, 1865.
3. Washington Post, Oct. 23, 1865.
4. Globe, 1865-6, p. 26.

question of the reconstruction of the states, and to which all papers, resolutions and bills relating to the subject should be referred without debate.[1] An effort was made by Mr. Raymond to except Tennessee from the jurisdiction of this committee. He presented the credentials of the members-elect from that state as a question of privilege and moved that they be referred to the Committee on Elections. The struggle which the state had made for the Union had won for her many friends, and, there is little doubt that a majority of both Houses were willing to re-admit her to all her former rights and privileges. It became a question, therefore, whether the credentials should be referred to the Committee on Elections or to the Joint Committee on Reconstruction. If to the former the question would have come before the House in a few days, and in the present state of feeling, the members from Tennessee would most likely have been admitted to seats. The Radicals, however, became alarmed and said that the credentials must be referred to the Joint Committee, for the question involved in their opinions was not the mere admission of Congressmen, but the creation of a state which required the joint action of the two Houses and the consent of the President. Others, not doubting the propriety of admitting Tennessee, but fearing to admit her without the joint action of both Houses, least they should thereby open the door to the other Southern states not so well prepared for admission, voted with the Radicals, and the credentials were referred to the Joint Committee on Reconstruction. This action had the effect to delay many months the admission of Tennnessee. Soon after this, perhaps, as a result of it, the two Houses separately resolved not to admit members from any seceded state until that state had been formally re-admitted to the Union by the joint action of the Houses, thus re-affirming the principle of the Wade-Davis bill adopted two years before.

Tennessee was referred to a sub-committee of the Joint Committee on Reconstruction, consisting of Messrs. Grimes, Grider and Bingham. While this committee was collecting evidence and preparing its report, certain members of Congress wrote to Governor Brownlow, and Mr. Fletcher, Secretary of State of Tennessee, to ask their opinion of the admission of the members from that state. The Governor and Secretary replied in substance that if the admis-

[1] Globe, Dec. 4, '65, p. 2

sion of Congressmen would cause the withdrawal of the army from the state, they were opposed to it. These letters were made the most of by those who opposed the admission of the state.[1]

On the 5th of March, however, Mr. Bingham, on behalf of the Joint Committee, made a report concerning the condition of Tennessee,[2] recommended the re-admission of the state, and submitted a joint resolution to that effect, with accompanying evidence and documents.[3] This resolution passed a second reading and was left at that stage for the time being, the House being too busy with the 14th amendment and the revenue bill to take up the question of reconstruction.[4] Tennessee was again compelled to wait.

Months passed by without further action, but as the end of the session drew near, vigorous effort were made to have the state re-admitted. The success of these efforts was assured by the action of the state in ratifying the 14th amendment, as described in a previous chapter, which was announced in Washington, July 19, by a telegram from Governor Brownlow.[5] On that very day, Mr. Bingham called up the resolution where it had been left four months before, and substituted for it another, simpler in form.[6]

The first resolution had been an elaborate statement of all the reasons which led Congress to re-admit the state, as well as the conditions upon which it was to be re-admitted. The preamble declared that the people had expressed their desire for re-admission, had amended their constitution and had organized a loyal government in accordance with the same, that they were found to be in a condition to exercise the functions of a state in the Union, and that they could do this only by the consent of the law-making power of the United States. The resolution declared that the state was thereby admitted to be a state in the Union "on the express condition," that the people enforce the provisions of the franchise law, and the amendments to the state constitution, and that they ratify the terms of the resolution itself before the admission of Senators and Representatives.[7] These were, indeed, hard and humiliating conditions.

1. New York Dispatch, Jan. 29, 1866. Globe, p. 465.
2. Globe, p. 1189.
3. Globe, p. 3,948.
4. Ibid.
5. Globe, July, 20, 1866, p. 3,956.
6. Globe, p. 3,948.
7. Globe, July, 1866, p. 3,948.

The substitute imposed no conditions. It merely said that as the state had ratified the 14th amendment and had shown to the satisfaction of Congress her return to her allegiance to the United States, she was thereby "declared to be restored" to the Union and entitled to representation in Congress. The next day, however, the phrase "declared to be" was cut out, the effect of which was to express more positively the power of Congress over the restoration of the states. Congress not only declared that the state was "restored" but that Congress had restored it. The same idea is implied in the fact that a resolution of any sort was thought necessary before the admission of Senators and Representatives.

Mr. Boutwell wanted the resolution amended so as to make negro suffrage a condition of representation,[1] while Messrs. Wood and Le Blond wanted it simply to declare that the United States recognized the government of Tennessee as legitimate and entitled to all rights and guarantees under the Constitution.[2] But Mr. Bingham would allow none of these amendments to be offered. The substitute passed to its third reading and the next day was adopted by a vote of 125 to 72, under the operation of the previous question. The result was greeted with demonstrations of applause on the floor and in the galleries.[3]

On the 21st, Mr. Trumbull reported the resolution in the Senate and asked for immediate consideration.[4] The Senate voted to postpone all other business until the matter was disposed of. The Senate amended the resolution by substituting for the one adopted by the House a longer and more elaborate preamble, which, after giving the history of the acts by which the state had gone out of the Union and those by which it had re-organized a loyal government, declared explicitly that the state could only be restored to the Union "by the consent of the law-making power of the United States." Thus amended the Senate passed the measure by a vote of 28 to 4. The House concurred in the amendment and the resolution was sent to the President for his signature.[5]

In adopting this resolution Congress reasserted the principles of

1. Globe, July, '66, p. 397.
2. Ibid.
3. Globe, p. 3,980.
4. Globe, p. 3,987.
5. Globe, July, '66, p. 4,056. See text of resolution App. Globe, 1865-6, p. 430; also McPherson's History of Rebellion, p. 153.

the Wade-Davis bill, that the state was out of its proper political relations in the Union, that it could be re-admitted only by Congress and that the re-admission must be, not by, but precedent to, the admission of Senators and Representatives—that the resolution was intended to admit the state, not merely to recognize its government as legitimate. The President opposed all of these principles and in the passage of the resolution Congress gained a decided victory over the President and the Presidential plan. The re-admission of the state in the manner described was, in effect, as in law, not the restoration of the state according to the Crittenden Resolution, but the re-creation of the state, and was in some sense an acknowledgment of the validity of the ordinance's secession.

President Johnson took this view of the matter but to refuse to sign the resolution would have defeated his long cherished wish to see the state restored. He signed the resolution, therefore, on th 23rd, and accompanied his message by an elaborate protest against the position of Congress that a joint resolution was necessary to the restoration of the state, and said that his approval of the resolution was not to be construed as an acknowledgment of the right of Congress to pass laws preliminary to the admission of duly qualified Representatives from any of the states, nor did he consider himself committed to all the statements made in the preamble.[1]

On the same day on which the President signed the joint resolution, the entire delegation from Tennessee was admitted to their seats,[2] and the formal restoration of the state to all her rights under the Constitution was an accomplished fact.

1. Globe, July, '66, p. 4,102.
2. Globe, July, '66, p. 4,106.

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